No. 13,077

United States Court of Appeals

FOR THE SIXTH CIRCUIT

ESTATE OF JOHN B. HASKINS, DECEASED
H. KEITH HARBER, EXECUTOR,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

ON PETITION TO REVIEW DECISION OF
THE TAX COURT OF THE UNITED STATES.

APPENDIX TO BRIEF OF PETITIONER.

H. KEITH HARBER,
Hamilton National Bank Bldg.
Chattanooga 2, Tennessee,
Attorney for Petitioner

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RESPONDENT'S EVIDENCE

	Direct	Cross	Re-Direct
Joseph E. Shrader	33a	49a	59a
Elizabeth Garrett Rigsby	62a		
John F. Crabtree	66a	69a	74a
E. Cecil Phillips	75a	78a	
Idell Eberhart O'Neil	134a		

PETITIONER'S EVIDENCE

	Direct	Cross	Re-Direct
John T. Menefee	81a	97a	
Rebecca B. Haskins	101a	108a	
H. Keith Harber	111a		
C. A. Clements	114a		
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DOCKET No. 53,505.

THE TAX COURT OF THE UNITED STATES.

ESTATE OF JOHN B. HASKINS, DECEASED,
H. KEITH HARBER, EXECUTOR,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

DOCKET ENTRIES.

1954

Jun. 11—Petition received and filed. Taxpayer notified. Fee paid.

Jun. 14—Copy of petition served on General Counsel.

Jun. 11—Request for Circuit hearing in Nashville, Tenn. filed by taxpayer. 6/15/54, granted.

Aug. 3—Answer filed by General Counsel.

Aug. 6—Copy of answer served on taxpayer, Nashville, Tenn.

Sep. 3—Reply to answer filed by taxpayer. Copy served.

1955

Feb. 11—Hearing set May 2, 1955, Nashville, Tenn.

Apr. 1—Motion for leave to withdraw Albert W. Taber, Robert N. Chambliss, and Carl A. Swafford, as counsel, filed by taxpayer. 4/4/55, granted.

Apr. 5—Motion for continuance with attached affidavits filed by petitioner.

Apr. 6—Hearing had before Judge Kern on petitioner's motion to continue. Granted in part.

Apr. 6—Order that petitioner's motion is denied as to a general continuance but case is stricken from the Nashville, Tenn. calendar of

5/2/55 and placed on the Knoxville, Tenn. calendar of 5/9/55 without prejudice to the right of petitioner to renew the motion, entered.

Apr. 7—Hearing set 5/9/55, Knoxville, Tenn.

May 11, 12—Hearing had before Judge Fisher on the merits. Order, dockets 53505 and 53506 consolidated. Briefs 7/12/55; replies 8/12/55.

May 27—Transcript of Hearing 5/11/55 filed.

May 27—Transcript of Hearing 5/12/55 filed.

Jul. 8—Brief filed by taxpayer. 7/13/55, copy served.

Jul. 12—Brief filed by General Counsel.

Jul. 26—Reply brief filed by taxpayer. Copy served.

1956

Jun. 20—Memorandum findings of fact and opinion filed. Fisher J. Decision will be entered under Rule 50. Served 6/20/56.

Oct. 17—Motion for leave to withdraw Charles L. Clauneh, John C. Goins, and Landon H. Gammon, as counsel filed. 10/17/56, granted. Served 10/18/56.

Oct. 19—Agreed Computation for Entry of decision filed.

Oct. 26—Decision entered, Judge Fisher, Div. 15. Served 10/29/56.

Nov. 9—Order fixing amount of bond at $282,000.00 entered. Served 11/13/56.

Nov. 20—Petition for review by U. S. Court of Appeals, Sixth Circuit, with assignments of error, filed by petitioner.

Nov. 20—Proof of service filed.

Dec. 10—Certified copy of order of Court of Appeals, Sixth Circuit, directing transmission of petitioner's original exhibits 1 thru 10, and respondent's original exhibits A thru N, admitted in evidence, ten days prior to hearing, filed.

PETITION.

(Filed June 11, 1954.)

The above-named petitioner hereby petitions for a redetermination of the deficiencies and penalties set forth by the Commissioner of Internal Revenue in his notice of deficiency (bearing symbols ARC-Ap:ATL Nash:CDW:VES) dated March 17, 1954, and as a basis of his proceeding alleges as follows:

1. Petitioner, H. Keith Harber, is the duly qualified, appointed and presently-acting Executor of the Estate of John B. Haskins, Deceased, as shown by certified copy of letters testamentary heretofore, on May 9, 1953, issued to petitioner by the County Court of Hamilton County, Tennessee, which certified copy of said letters testamentary is attached hereto and made a part of this petition, as Exhibit A hereto. Said letters testamentary, since their issuance, have continued to be and are now in full force and effect, and petitioner is acting herein on behalf of the Estate of the said John B. Haskins, Deceased, under and by virtue of the authority so to act invested in him by said County Court of Hamilton County, Tennessee, as evidenced by said letters testamentary. Petitioner's address is 319 Hamilton National Bank Building, Chattanooga 2, Tennessee. The residence of petitioner's testator, John B. Haskins, was in Chattanooga, Tennessee, at all times pertinent hereto. The said John B. Haskins died testate on May 5, 1953, while a resident of Chattanooga, Hamilton County, Tennessee. The returns for the periods here involved were filed with the Collector of Internal Revenue for the District of Tennessee, at Nashville, Tennessee.

2. The notice of deficiency (a copy of which is attached and marked Exhibit B) was mailed to petitioner on March 17, 1954.

3. The deficiencies and penalties as determined and asserted by the Commissioner are in income taxes for the calendar years 1941, 1942, 1943 (including Victory Tax), 1944, 1945, 1946 and 1947, and 50 per cent fraud penalties thereon, as follows:

Calendar Year:	Amount of Deficiency Determined:	Amount of Penalty Asserted:	Totals for Year:
1941	$ 6,343.10	$ 3,171.55	$ 9,514.65
1942	10,571.13	5,285.56	15,856.69
1943	17,238.07	8,619.04	25,857.11
1944	26,280.06	13,140.03	39,420.09
1945	33,057.81	16,528.91	49,586.72
1946	17,391.03	8,695.52	26,086.55
1947	10,555.66	5,277.83	15,833.49
Totals	121,436.86	60,718.44	182,155.30

The total amounts of said determined deficiencies and asserted penalties are in dispute.

4. The determination of tax and assertion of penalties set forth in said notice of deficiency are based upon the following errors:

(a) The Commissioner erred in asserting a deficiency for the calendar years 1941, 1942, 1943, 1944 and 1945, because the assessment of any deficiencies in taxes for said years was barred by the statute of limitations prior to the issuance of the notice of deficiency, it being provided in Section 275(a) of the Internal Revenue Code that assessment of income taxes shall be made within three years after the return was filed, and that no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of such period, and it being provided in Section 275(c) of the Internal Revenue Code that if the taxpayer omits from gross income an amount properly includible therein which is in excess of 25 per centum of the amount of gross income stated in the return, the tax may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time within five years after the return was filed.

Inasmuch as no assessment was made within five years from the time the returns were filed, and no waiver of the statute was executed by or on behalf of the taxpayer, the Commissioner erred in determining said deficiencies for the years 1941, 1942, 1943, 1944 and 1945, and petitioner expressly pleads and relies on the bar imposed by the statute.

(b) The Commissioner erred in asserting fraud penalties for the years 1941, 1942, 1943, 1944, 1945, 1946 and 1947. Petitioner avers that no part of any deficiency was due to fraud with intent to evade tax, and no false or fraudulent return or list was willfully made by or on behalf of the taxpayer.

(c) The Commissioner erred in asserting deficiencies for the calendar year 1946 in the amount of $17,391.03 and for the calendar year 1947 in the amount of $10,555.66. Said exact amounts were paid by taxpayer to the Collector of Internal Revenue, Nashville, Tennessee, on or about March 7, 1951, and thereafter, on or about December 29, 1951, he paid all interest due or accrued on said amounts, to wit: $4,144.07 on the 1946 deficiency and $1,881.84 on the 1947 deficiency. The Commissioner has asserted the deficiencies set out in his letter of March 17, 1954, without giving taxpayer or petitioner any credit for said payments that were paid as above stated.

5. The facts upon which petitioner relies as the basis of this proceeding are as follows:

(a) The income tax returns of taxpayer, John B. Haskins, petitioner's decedent, for the calendar years 1941, 1942, 1943, 1944 and 1945 were filed more than five years before any assessment of any tax for said years was made or any proceeding in court for the collection of any such taxes was begun, and no waiver of the statute providing for necessity of assessment within three years, or within five years after the return was filed in case of gross error, with respect to said years was ever executed by taxpayer or by any other person on his behalf. Petitioner expressly pleads and relies on the bar imposed by the statute.

(b) Taxpayer was not in any year guilty of fraud with intent to evade tax and did not willfully make any false or fraudulent return or list.

(c) Taxpayer was heretofore notified of the amounts of deficiencies determined for the years 1946 and 1947 in the amounts of $17,391.03 and $10,555.66, respectively,

and, pursuant to such notification, paid said amounts to the Collector of Internal Revenue, Nashville, Tennessee, on or about March 7, 1951, and on or about December 29, 1951, paid to said Collector the amount of $6,025.91, being the interest in full on said amounts to date of payment.

(d) Taxpayer was a prominent physician and surgeon, who practiced his profession in Chattanooga, Tennessee, continuously from the year 1911 until he died on May 5, 1953. He reached sixty years of age in 1941, the first year here under review. He continued to carry on an extremely active practice until May, 1953, at which time he was nearly seventy-two years of age. On May 5, 1953, he died as a result of cerebral thrombosis and generalized arterial sclerosis, which was brought on to a considerable extent by his constant and unrelenting work in attending his patients. During the years under review he was treating from seventy to one hundred patients each day, and was unable to devote time to his financial books or records, and he had no personal knowledge of any discrepancy between his actual income and that shown in his income tax return as filed.

(e) Taxpayer's employees who kept his books were assistants in his medical office; who, because of their heavy duties in taxpayer's medical practice, were unable to properly maintain his income records or to submit accurate accounting thereof for income tax returns. No employee of taxpayer was ever instructed or in any manner authorized by taxpayer to perpetrate any fraud with intent to evade tax or to willfully make any fraudulent return or list, nor was any such action on their part ever known, suspected, ratified or acquiesced in by taxpayer.

(f) Taxpayer did not know that any taxable income, either from his professional practice or from other sources was not reported in his income tax returns.

(g) Taxpayer's income tax returns for the years in question were prepared by John T. Menefee, an independent certified public accountant, of Chattanooga, Tennessee, who was formerly employed by the Bureau of

Internal Revenue. The accountant was instructed by taxpayer to obtain the information for preparing said returns from taxpayer's employees and from real estate agencies handling taxpayer's rental and investment property. Said accountant was retained by taxpayer for the express purpose of having a man trained in tax procedures and requirements to correctly assemble all proper and necessary information for fully and correctly reporting all of taxpayer's income, and taxpayer relied upon him to do so. Said accountant prepared the returns from the information obtained from taxpayer's employees and from the real estate agencies handling taxpayer's rental and investment property, and presented the returns to taxpayer for execution, and taxpayer each year executed the returns without making any personal verification of the correctness of the items of income or deductions shown therein.

(h) Taxpayer relied upon his office personnel to keep and maintain adequate records of his professional income and deductions for each year. Taxpayer relied on his office personnel to furnish the accountant the correct details of his professional income and expenses, and upon his real estate agents to furnish the accountant with the amounts of his capital gains and losses and rental income. He thought that said information had been correctly submitted to the accountant, and by the accountant correctly compiled and entered in the tax returns which he signed.

(i) Taxpayer personally made no entries on his books or records, and had no knowledge of bookkeeping or accounting. His participation in the preparation and filing of his income tax returns consisted only in signing the returns prepared by the certified public accountant, and in signing checks, which were signed in blank for the accountant to complete and fill in the amounts in order to pay whatever tax was shown to be payable.

(j) Taxpayer did not wilifully omit any items of income from his returns, and did not perpetrate any willful fraud in making or filing the return.

WHEREFORE, petitioner prays that this Court may hear the proceeding and determine that respondent erred as hereinbefore alleged, and for such other and further relief as the nature of this case may permit.

/s/ H. KEITH HARBER,
As Executor of the Estate of John B. Haskins, Deceased, Petitioner.

/s/ ALBERT W. TABER,
/s/ ROBERT N. CHAMBLISS,
/s/ CARL A. SWAFFORD,
/s/ CHARLES L. CLAUNCH,
/s/ JOHN C GOINS,
/s/ LANDON H. GAMMON,
Counsel for Petitioner.

(Verification omitted.)

ANSWER.

(Filed August 3, 1954.)

Now Comes the Commissioner of Internal Revenue, by his attorney, Daniel A. Taylor, Chief Counsel, Internal Revenue Service, and for answer to the petition in this proceeding admits, denies and alleges as follows:

1. Admits the allegations contained in paragraph 1 of the petition.

2. Denies the allegations contained in paragraph 2 of the petition, except respondent admits that the statutory notice of deficiency herein was mailed on March 17, 1954.

3. Denies the allegations contained in paragraph 3 of the petition and in the unlettered and unnumbered subparagraph thereof, except respondent admits that in the statutory notice of deficiency herein he determined deficiencies in income taxes and penalties as follows:

Year	*Deficiency*	*50% Fraud Penalty*
1941	$ 6,343.10	$ 3,171.55
1942	10,571.13	5,285.56
1943	17,238.07	8,619.04
1944	26,280.06	13,140.03
1945	33,057.81	16,528.91
1946	17,391.03	8,695.52
1947	10,555.66	5,277.83

4(a). Denies the allegations contained in subparagraph (a) of paragraph 4 of the petition and in the unnumbered and unlettered subparagraph thereof.

(b) and (c). Denies the allegations contained in subparagraphs (b) and (c) of paragraph 4 of the petition.

5(a) through (c). Denies the allegations contained in subparagraphs (a) through (c) of paragraph 5 of the petition.

(d). Denies the allegations contained in subparagraph (d) of paragraph 5 of the petition, except respondent admits that the decedent, John B. Haskins, was a physician and surgeon who practiced his profession in Chattanooga, Tennessee, during the taxable years ended December 31, 1941, to December 31, 1947, inclusive.

(e) through (j). Denies the allegations contained in subparagraphs (e) through (j) of paragraph 5 of the petition.

6. Denies specifically each and every allegation not hereinbefore expressly admitted or denied.

Further answering the petition, the respondent alleges:

Years 1941 to 1947, Inclusive.

7. During the taxable years ended December 31, 1941, to December 31, 1947, inclusive, John B. Haskins, sometimes hereinafter referred to as the decedent, engaged in and derived taxable income from the practice of medicine.

In addition, during the said taxable years, decedent received taxable income from capital gains, dividends, annuities and director's fees.

8. During each of the taxable years ended December 31, 1941, December 31, 1942, and December 31, 1943, the decedent failed to keep adequate and complete books of account and records of his professional practice and other income-producing activities as required by the applicable provisions of the Internal Revenue Code and the regulations promulgated thereunder. Accordingly, the respondent has made an analysis of bank deposits and bank records to determine the correct income tax liability of the decedent for the aforementioned taxable years.

9. During each of the taxable years ended December 31, 1941, December 31, 1942, and December 31, 1943, the decedent derived and realized taxable income from his professional practice and other income-producing activities, determined by the bank deposit method, which said taxable income, the decedent, with intent to evade and defeat tax, willfully and fraudulently failed and refused to report in his individual Federal income tax return for each of the said taxable years.

10. During each of the taxable years ended December 31, 1944, December 31, 1945, December 31, 1946, and December 31, 1947, the decedent derived and realized taxable income from his professional practice and other income-producing activities, determined by an examination of his books and records, which said taxable income the decedent, with intent to evade and defeat tax, willfully and fraudulently failed and refused to report in his individual Federal income tax return for each of the said taxable years.

1941.

11. Decedent, with intent to evade and defeat tax, willfully and fraudulently reported in his individual Federal income tax return for the taxable year ended December 31, 1941, the amount of $3,149.02 as his taxable net

income for such taxable year; whereas, in truth and in fact, decedent's taxable net income for the said taxable year was $23,225.37.

12. Decedent, with intent to evade and defeat tax, willfully and fraudulently reported in his individual Federal income tax return for the taxable year ended December 31, 1941, the amount of $10,340.37 as income realized from the practice of medicine for such taxable years; whereas, in truth and in fact, the decedent realized income from the practice of medicine for the said taxable year in the amount of $31,745.15.

13. Decedent, with intent to evade and defeat tax, fraudulently understated in his individual Federal income tax return for the taxable year ended December 31, 1941, taxable income realized from the practice of medicine during the said taxable year by the amount of $21,404.78.

14. Decedent, with intent to evade and defeat tax, willfully and fraudulently failed to report in his individual Federal income tax return for the taxable year ended December 31, 1941, long-term capital gain and short-term capital gain from real estate transactions in the amount of $219.90.

1942.

15. Decedent, with intent to evade and defeat tax, willfully and fraudulently reported in his individual Federal income tax return for the taxable year ended December 31, 1942, the amount of $7,446.87 as his taxable net income for such taxable year; whereas, in truth and in fact, decedent's taxable net income for the said taxable year was $29,673.09.

16. Decedent, with intent to evade and defeat tax, willfully and fraudulently reported in his individual Federal income tax return for the taxable year ended December 31, 1942, the amount of $18,840.27 as income realized from the practice of medicine for such taxable year; whereas, in truth and in fact, decedent realized income from the

practice of medicine for the said taxable year in the amount of $42,450.55.

17. Decedent, with intent to evade and defeat tax, fraudulently understated in his individual Federal income tax return for the taxable year ended December 31, 1942, taxable income realized from the practice of medicine during the said taxable year by the amount of $23,610.28.

18. Decedent, with intent to evade and defeat tax, willfully and fraudulently failed to report in his individual Federal income tax return for the taxable year ended December 31, 1942, long term capital gain from real estate transactions in the amount of $88.96.

1943.

19. Decedent, with intent to evade and defeat tax, willfully and fraudulently reported in his individual Federal income tax return for the taxable year ended December 31, 1943, the amount of $10,915.86 as his income tax net income and the amount of $12,280.92 as his victory tax net income; whereas in truth and in fact, decedent's income tax net income for the said taxable year was $42,252.36 and his victory tax net income for the said taxable year was $36,807.65.

20. Decedent, with intent to evade and defeat tax, willfully and fraudulently reported in his individual Federal income tax return for the taxable year ended December 31, 1943, the amount of $18,739.67 as income realized from the practice of medicine for the said taxable year; whereas, in truth and in fact, the decedent realized income from the practice of medicine for the said taxable year in the amount of $44,794.65.

21. Decedent, with intent to evade and defeat tax, fraudulently understated in his individual Federal income tax return for the taxable year ended December 31, 1943, income realized from the practice of medicine during the said taxable year in the amount of $26,054.98.

22. Decedent, with intent to evade and defeat tax, willfully and fraudulently failed to report in his individual

Federal income tax return for the taxable year ended December 31, 1943, long-term capital gain from real estate transactions in the amount of $6,809.77.

23. Decedent, with intent to evade and defeat tax, willfully and fraudulently failed to report in his individual Federal income tax return for the taxable year ended December 31, 1943, income derived from annuity contracts in the amount of $60.00.

1944.

24. Decedent, with intent to evade and defeat tax, willfully and fraudulently reported in his individual Federal income tax return for the taxable year ended December 31, 1944, the amount of $11,734.79 as his taxable net income for such taxable year; whereas, in truth and in fact, decedent's taxable net income for the said taxable year was $54,384.41.

25. Decedent, with intent to evade and defeat tax, willfully and fraudulently reported in his individual Federal income tax return for the taxable year ended December 31, 1944, the amount of $8,823.88 as income realized from the practice of medicine during such taxable year; whereas, in truth and in fact, the decedent realized income from the practice of medicine for the said taxable year in the amount of $46,297.52.

26. Decedent, with intent to evade and defeat tax, fraudulently understated in his individual Federal income tax return for the taxable year ended December 31, 1944, taxable income realized from the practice of medicine during said taxable year by the amount of $37,473.64.

27. Decedent, with intent to evade and defeat tax, willfully and fraudulently failed to report in his individual Federal income tax return for the taxable year ended December 31, 1944, long-term capital gain from real estate transactions in the amount of $6,027.92.

28. Decedent, with intent to evade and defeat tax, willfully and fraudulently failed to report in his individual Federal income tax return for the taxable year ended De-

cember 31, 1944, income derived from annuity contracts in the amount of $272.50.

1945.

29. Decedent, with intent to evade and defeat tax, willfully and fraudulently reported in his individual Federal income tax return for the taxable year ended December 31, 1945, the amount of $14,172.21 as his taxable net income for such taxable year; whereas, in truth and in fact, decedent's taxable net income for the said taxable year was $62,543.11.

30. Decedent, with intent to evade and defeat tax, willfully and fraudulently reported in his individual Federal income tax return for the taxable year ended December 31, 1945, the amount of $10,486.22 as income realized from the practice of medicine during such taxable year; whereas, in truth and in fact, the decedent realized income from the practice of medicine for the taxable year in the amount of $57,841.28.

31. Decedent, with intent to evade and defeat tax, fraudulently understated in his individual Federal income tax return for the taxable year ended December 31, 1945, income realized from the practice of medicine during said taxable year by the amount of $47,355.06.

32. Decedent, with intent to evade and defeat tax, willfully and fraudulently failed to report in his individual Federal income tax return for the taxable year ended December 31, 1945, long-term capital gain from real estate transactions in the amount of $606.09.

33. Decedent, with intent to evade and defeat tax, willfully and fraudulently failed to report in his individual Federal income tax return for the taxable year ended December 31, 1945, income derived from annuity contracts in the amount of $1,282.50.

1946.

34. Decedent, with intent to evade and defeat tax, willfully and fraudulently reported in his individual Fed-

eral income tax return for the taxable year ended December 31, 1946, the amount of $15,065.80 as his taxable net income for such taxable year; whereas, in truth and in fact, decedent's taxable net income for the said taxable year was $44,961.64.

35. Decedent, with intent to evade and defeat tax, willfully and fraudulently reported in his individual Federal income tax return for the taxable year ended December 31, 1946, the amount of $15,484.18 as income realized from the practice of medicine during such taxable year; whereas, in truth and in fact, the decedent realized income from the practice of medicine for the said taxable year in the amount of $46,744.02.

36. Decedent, with intent to evade and defeat tax, fraudulently understated in his individual federal income tax return for the taxable year ended December 31, 1946, income realized from the practice of medicine during the said taxable year by the amount of $31,259.84.

37. Decedent, with intent to evade and defeat tax, willfully and fraudulently failed to report in his individual Federal income tax return for the taxable year ended December 31, 1946, income derived from annuity contracts in the amount of $1,620.00.

1947.

38. Decedent, with intent to evade and defeat tax, willfully and fraudulently reported in his individual Federal income tax return for the taxable year ended December 31, 1947, the amount of $22,623.46 as his taxable net income for such taxable year; whereas, in truth and in fact, decedent's taxable net income for the said taxable year was $40,245.01.

39. Decedent, with intent to evade and defeat tax, willfully and fraudulently reported in his individual Federal income tax return for the taxable year ended December 31, 1947, the amount of $19,798.16 as income realized from the practice of medicine during such taxable year; whereas, in truth and in fact, decedent realized income

from the practice of medicine during said taxable year in the amount of $38,429.76.

40. Decedent, with intent to evade and defeat tax, fraudulently understated in his individual Federal income tax return for the taxable year ended December 31, 1947, taxable income realized from the practice of medicine during said taxable year by the amount of $18,631.60.

41. Decedent, with intent to evade and defeat tax, willfully and fraudulently failed to report in his individual Federal income tax return for the taxable year ended December 31, 1947, income derived from annuity contracts in the amount of $2,018.12.

WHEREFORE, it is prayed:

1. That the relief sought in the petition be denied;

2. That the deficiencies in income taxes for the taxable years 1941, 1942, 1943, 1944, 1945, 1946 and 1947, as set forth in the statutory notice of deficiency be in all respects approved; and

3. That the deficiencies in fraud penalties for the taxable years 1941, 1942, 1943, 1944, 1945, 1946 and 1947, as set forth in the statutory notice of deficiency, be in all respects approved.

(Signed) DANIEL A. TAYLOR, JFW
Chief Counsel,
Internal Revenue Service.

Of Counsel:

WILLIAM H. LOEB,
Regional Counsel,

J. FROST WALKER,
Special Assistant to the Regional Counsel,

LESTER R. URETZ,
Special Attorney,
Internal Revenue Service.

REPLY.

(Filed September 3, 1954.)

The above-named petitioner, for reply to the allegations affirmatively set out by respondent in his answer, admits and denies as follows:

7. Petitioner admits that during the taxable years ended December 31, 1941 to December 31, 1947, inclusive, the decedent, John B. Haskins, engaged in and derived taxable income from the practice of medicine. Petitioner admits that, during some of said years, said decedent received taxable income from capital gains, dividends, annuities and director's fees, but denies that said decedent received taxable income from all such items in all of said years.

8. Petitioner denies that during each of the taxable years ended December 31, 1941, December 31, 1942, and December 31, 1943, the decedent failed to keep adequate and complete books of account and records of his professional practice and other income-producing activities as required by the applicable provisions of the Internal Revenue Code and the regulations promulgated thereunder. Petitioner admits that respondent has made what purports to be an analysis of bank deposits and bank records, but denies that it shows the correct income tax liability of the decedent for the aforementioned taxable years.

9. Petitioner denies that during each or any of the taxable years ended December 31, 1941, December 31, 1942, and December 31, 1943, the decedent derived and realized taxable income from his professional practice and other income-producing activities as determined by the bank deposit method, and denies that the decedent, with intent to evade and defeat tax, willfully and fraudulently failed and refused to report his taxable income in his individual Federal income tax return for each or any of said taxable years.

10. Petitioner admits that, during each of the taxable years ended December 31, 1944, December 31, 1945, December 31, 1946, and December 31, 1947, the decedent

derived and realized taxable income from his professional practice and other income-producing activities, but denies that said income was in the amounts and to the extent determined by respondent's examination of his books and records, and denies that the decedent, with intent to evade and defeat tax, willfully and fraudulently failed and refused to report his taxable income in his individual Federal income tax return for each or any of the said taxable years.

1941.

11. Petitioner denies that decedent, with intent to evade and defeat tax, willfully and fraudulently reported in his individual Federal income tax return for the taxable year ended December 31, 1941, the amount of $3,149.02 as his taxable net income for such taxable year; and petitioner denies that decedent's taxable net income for the said taxable year was $23,225.37.

12. Petitioner denies that decedent, with intent to evade and defeat tax, willfully and fraudulently reported in his individual Federal income tax return for the taxable year ended December 31, 1941, the amount of $10,340.37 as income realized from the practice of medicine for such taxable year; and petitioner denies that the decedent realized income from the practice of medicine for the said taxable year in the amount of $31,745.15.

13. Petitioner denies that decedent, with intent to evade and defeat tax, fraudulently understated in his Federal income tax return for the taxable year ended December 31, 1941, taxable income realized from the practice of medicine during the said taxable year by the amount of $21,404.78, and denies that the decedent, with such intent, fraudulently understated his taxable income in any amount.

14. Petitioner denies that decedent, with intent to evade and defeat tax, willfully and fraudulently failed to report in his individual Federal income tax return for the taxable year ended December 31, 1941, long-term capital gain and short-term capital gain from real estate transactions in the amount of $219.90, or in any other amount.

1942.

15. Petitioner denies that decedent, with intent to evade and defeat tax, willfully and fraudulently reported in his individual Federal income tax return for the taxable year ended December 31, 1942, the amount of $7,446.87; and petitioner denies that decedent's taxable net income for the said taxable year was $29,673.09.

16. Petitioner denies that decedent, with intent to evade and defeat tax, willfully and fraudulently reported in his individual Federal income tax return for the taxable year ended December 31, 1942, the amount of $18,840.27 as income realized from the practice of medicine for such taxable year; and petitioner denies that decedent realized income from the practice of medicine for the said taxable year in the amount of $42,450.55.

17. Petitioner denies that decedent, with intent to evade and defeat tax, fraudulently understated in his individual Federal income tax return for the taxable year ended December 31, 1942, taxable income realized from the practice of medicine during the said taxable year by the amount of $23,610.28, or by any other amount.

18. Petitioner denies that decedent, with intent to evade and defeat tax, willfully and fraudulently failed to report in his individual Federal income tax return for the taxable year ended December 31, 1942, long-term capital gain from real estate transactions in the amount of $88.96, or in any other amount.

1943.

19. Petitioner denies that decedent, with intent to evade and defeat tax, willfully and fraudulently reported in his individual Federal income tax return for the taxable year ended December 31, 1943, the amount of $10,915.86 as his income tax net income and the amount of $12,280.92 as his victory tax net income; and petitioner denies that decedent's income tax net income for the said taxable year was $42,252.36 and denies that his victory tax net income for the said taxable year was $36,807.65.

20. Petitioner denies that decedent, with intent to evade and defeat tax, willfully and fraudulently reported in his individual Federal income tax return for the taxable year ended December 31, 1943, the amount of $18,739.67 as income realized from the practice of medicine for the said taxable year; and petitioner denies that the decedent realized income from the practice of medicine for the said taxable year in the amount of $44,794.65.

21. Petitioner denies that decedent, with intent to evade and defeat tax, fraudulently understated in his individual Federal income tax return for the taxable year ended December 31, 1943, income realized from the practice of medicine during the said taxable year in the amount of $26,054.98, or in any other amount.

22. Petitioner denies that decedent, with intent to evade and defeat tax, willfully and fraudulently failed to report in his individual Federal income tax return for the taxable year ended December 31, 1943, long-term capital gain from real estate transactions in the amount of $6,809.77, or in any other amount.

23. Petitioner denies that decedent, with intent to evade and defeat tax, willfully and fraudulently failed to report in his individual Federal income tax return for the taxable year ended December 31, 1943, income derived from annuity contracts in the amount of $60.00, or in any other amount.

1944.

24. Petitioner denies that decedent, with intent to evade and defeat tax, willfully and fraudulently reported in his individual Federal income tax return for the taxable year ended December 31, 1944, the amount of $11,734.79 as his taxable net income for such taxable year; and petitioner denies that decedent's taxable net income for the said taxable year was $54,384.41.

25. Petitioner denies that decedent, with intent to evade and defeat tax, willfully and fraudulently reported in his individual Federal income tax return for the taxable year ended December 31, 1944, the amount of $8,-

$23.88 as income realized from the practice of medicine during such taxable year; and petitioner denies that the decedent realized income from the practice of medicine for the said taxable year in the amount of $46,297.52.

26. Petitioner denies that decedent, with intent to evade and defeat tax, fraudulently understated in his individual Federal income tax return for the taxable year ended December 31, 1944, taxable income realized from the practice of medicine during said taxable year by the amount of $37,473.64, or in any other amount.

27. Petitioner denies that decedent, with intent to evade and defeat tax, willfully and fraudulently failed to report in his individual Federal income tax return for the taxable year ended December 31, 1944, long-term capital gain from real estate transactions in the amount of $6,027.92, or in any other amount.

28. Petitioner denies that decedent, with intent to evade and defeat tax, willfully and fraudulently failed to report in his individual Federal income tax return for the taxable year ended December 31, 1944, income derived from annuity contracts in the amount of $272.50, or in any other amount.

1945.

29. Petitioner denies that decedent, with intent to evade and defeat tax, willfully and fraudulently reported in his individual Federal income tax return for the taxable year ended December 31, 1945, the amount of $14,172.21 as his taxable net income for such taxable year; and petitioner denies that decedent's taxable net income for the said taxable year was $62,543.11.

30. Petitioner denies that decedent, with intent to evade and defeat tax, willfully and fraudulently reported in his individual Federal income tax return for the taxable year ended December 31, 1945, the amount of $10,486.22 as income realized from the practice of medicine during such taxable year; and petitioner denies that decedent realized income from the practice of medicine for the taxable year in the amount of $57,841.28.

31. Petitioner denies that decedent, with intent to evade and defeat tax, fraudulently understated in his individual Federal income tax return for the taxable year ended December 31, 1945, income realized from the practice of medicine during said taxable year by the amount of $47,355.06, or by any other amount.

32. Petitioner denies that decedent, with intent to evade and defeat tax, willfully and fraudulently failed to report in his individual Federal income tax return for the taxable year ended December 31, 1945, long-term capital gain from real estate transactions in the amount of $606.09, or in any other amount.

33. Petitioner denies that decedent, with intent to evade and defeat tax, willfully and fraudulently failed to report in his individual Federal income tax return for the taxable year ended December 31, 1945, income derived from annuity contracts in the amount of $1,282.50, or in any other amount.

1946.

34. Petitioner denies that decedent, with intent to evade and defeat tax, willfully and fraudulently reported in his individual Federal income tax return for the taxable year ended December 31, 1946, the amount of $15,065.80 as his taxable net income for such taxable year; and petitioner denies that decedent's taxable net income for the said taxable year was $44,961.64.

35. Petitioner denies that decedent, with intent to evade and defeat tax, willfully and fraudulently reported in his individual Federal income tax return for the taxable year ended December 31, 1946, the amount of $15,484.18 as income realized from the practice of medicine during such taxable year; and petitioner denies that the decedent realized income from the practice of medicine for the said taxable year in the amount of $46,744.02.

36. Petitioner denies that decedent, with intent to evade and defeat tax, fraudulently understated in his individual Federal income tax return for the taxable year

ended December 31, 1946, income realized from the practice of medicine during the said taxable year by the amount of $31,259.84, or by any other amount.

37. Petitioner denies that decedent, with intent to evade and defeat tax, willfully and fraudulently failed to report in his individual Federal income tax return for the taxable year ended December 31, 1946, income derived from annuity contracts in the amount of $1,620.00, or in any other amount.

1947.

38. Petitioner denies that decedent, with intent to evade and defeat tax, willfully and fraudulently reported in his individual Federal income tax return for the taxable year ended December 31, 1947, the amount of $22,623.46 as his taxable net income for such taxable year; and petitioner denies that decedent's taxable net income for the said taxable year was $40,245.01.

39. Petitioner denies that decedent, with intent to evade and defeat tax, willfully and fraudulently reported in his individual Federal income tax return for the taxable year ended December 31, 1947, the amount of $19,798.16 as income realized from the practice of medicine during such taxable year; and petitioner denies that decedent realized income from the practice of medicine during said taxable year in the amount of $38,429.76.

40. Petitioner denies that decedent, with intent to evade and defeat tax, fraudulently understated in his individual Federal income tax return for the taxable year ended December 31, 1947, taxable income realized from the practice of medicine during said taxable year by the amount of $18,631.60, or by any other amount.

41. Petitioner denies that decedent, with intent to evade and defeat tax, willfully and fraudulently failed to report in his individual Federal income tax return for the taxable year ended December 31, 1947, income derived from annuity contracts in the amount of $2,018.12, or in any other amount.

42. Petitioner denies specifically each and every affirmative allegation set out in respondent's answer not hereinbefore expressly admitted or denied.

WHEREFORE, it is prayed that the affirmative relief requested by respondent in his answer be denied.

CHARLES L. CLAUNCH,
Counsel for Petitioner.

Of Counsel:
TABOR, CHAMBLISS, SWAFFORD & CLAUNCH,
GOINS & GAMMON.

OFFICIAL REPORT OF PROCEEDINGS BEFORE THE TAX COURT OF THE UNITED STATES.

Courtroom, Supreme Court Building,
Knoxville, Tennessee,
Wednesday, May 11, 1955.

The above-entitled matter came on for hearing, pursuant to notice to the parties, at 10:30 o'clock a.m.

BEFORE: HONORABLE MORTON P. FISHER, J., Presiding.

APPEARANCES:

CHARLES L. CLAUNCH, ESQ., Chattanooga Bank Building, Chattanooga, Tennessee; JOHN C. GOINS, ESQ., Hamilton National Bank Building, Chattanooga, Tennessee; and LANDON GAMMON, ESQ., Hamilton National Bank Building, Chattanooga, Tennessee, for the petitioner.

LESTER R. URETZ, ESQ. (Hon. R. P. Hertzog, Acting Chief Counsel, Internal Revenue Service), for the respondent.

(3) PROCEEDINGS.

The Clerk: Docket No. 53505 and Docket No. 53506, Estate of John B. Haskins.

Will you state your appearances for the record, please?

Mr. Claunch: Charles L. Claunch, John C. Goins, and Landon Gammon for the petitioner.

The Clerk: Your Honor, Mr. Uretz is interviewing a witness. I believe he is in one of the rooms.

(Short interruption.)

The Clerk: State your appearance, please.

Mr. Uretz: Lester R. Uretz for respondent.

The Court: You may proceed with your opening statement.

Mr. Uretz: Has petitioner made his opening statement?

The Court: No, he has not. I intended for you to proceed with yours.

Mr. Uretz: Yes.

This case, Your Honor, involves deficiencies for the years 1941 through 1949, and fraud penalties for the years 1941 through 1948. The correctness of the deficiencies asserted by the Commissioner have not been put in issue by the petitioner, except that he raises the statute of limitations as a bar to the assessment of the deficiencies for the (4) years 1941 through 1945.

The deficiencies arise out of a failure of the deceased, Dr. John B. Haskins, to report all of his professional income, capital gains and income from annuities during the taxable years in question.

Your Honor, these cases have not been consolidated for trial and I move that they be consolidated at this time.

The Court: Any objection?

Mr. Claunch: We are agreeable, Your Honor.

The Court: They will be consolidated.

Mr. Uretz: That is all I have, Your Honor.

Mr. Claunch: May it please the Court, the taxpayer, Dr. John B. Haskins, died May 5, 1953, and the deficiencies, as Mr. Uretz has stated, are asserted against his estate for

the calendar years 1941 through 1949, and the fraud penalties for each of those years except 1949. Mrs. Haskins joined in making the returns for 1948 and 1949, and is a joint petitioner as to those two years.

At the time this investigation was begun, which as well as I can determine was about June, 1950, until his death, Dr. Haskins did everything that he could to assist the agents in the investigation, and turned over to them all his books, letters, cash receipts, duplicate receipt books, bank statements and everything else that he had in his office.

He also instructed the certified public accountant (5) who had made his returns for many years to assist, and instructed the employees of his office and real estate representative to give them all the information they asked for, and those things were done.

All of his records were there for seven years back. Now, the cash books and receipt books prior to that have not yet been found. The agent found no fraudulent act on the part of Dr. Haskins. He had nothing hidden when they came in to make their audit, and he made no attempt to hide anything then or thereafter, and they found that everything that he had he had put into bank accounts in his own name.

He immediately went with them to open his safety deposit box. It had nothing of value in it. He had no bank accounts, securities or property in anyone else's name. There were no dummy transactions. He had no false books or false entries, and there was no effort to conceal of any kind, either at, before or after the investigation.

The fraud charges, as we see them, are based on inferences in connection with three circumstances. Two of those were unknown to Dr. Haskins. Now the third, which was failure to include some annuities resulted from the taxpayer having been advised and believing that annuities were returned capital and did not constitute income.

Now of the other two circumstances, by far the larger was an understatement of gross receipts in Dr. Haskins'

profession as a physician and surgeon. Unquestionably these (6) gross receipts for most of these years were substantially understated in the returns. Dr. Haskins didn't know nor even suspect what was going on until the agents came in and checked the records, and showed him what had been happening. He was first, last and altogether a doctor, a physician and surgeon. He never made a single entry in all these years in the books. He didn't know how to use the typewriter and adding machine. He never made up deposit slips. He very seldom ever wrote a check except just to sign it. He never handled purchase or sale or rental of real estate, and, incidentally, he never asked a patient if he could pay him, and never refused to go see one.

He never took a vacation, never stopped practicing medicine for anything else, and seldom did anything except practice medicine. He never made his own tax returns, and he never examined one that had been made for him. He never made out a check in payment of his tax. He signed blank checks. He had other people that he considered competent to do all these other things for him, and having done that he depended entirely on them to discharge their responsibilities in a competent manner.

He had all he could do—I think more than most people could have done—to handle a very heavy medical practice which had been built up since 1911 in Chattanooga, and he did not take time to personally supervise his bookkeeping (7) or to summarize it, or, as I say, even to make his tax returns. The returns were made regularly for a great many years, including all these years by Mr. John Menefee, an independent certified public accountant.

I think the record will show that he treated anywhere from seventy to one hundred patients a day. He performed many surgical operations both in Chattanooga and in surrounding territory. He handled industrial work for a large number of war plants. He did medical work for a number of insurance companies.

Now, each year the bookkeeper or someone in the office, in Dr. Haskins' office, assembled the information for

the tax return, independent of any help or knowledge from him as to the data contained in it, and they submitted those things usually on typewritten sheets, sometimes supplemented by telephone calls, to Mr. Menefee, who, as I say, was an independent certified public accountant, formerly himself a revenue agent.

Mr. Menefee made the returns. Now, Dr. Haskins' real estate rentals and sales were handled by, as far as I can determine, two companies, Mr. John Crabtree and Mr. Cecil Phillips; Mr. Menefee was instructed to get all the information relative to any sort of real estate income from the real estate offices.

Dr. Haskins personally had nothing whatsoever to
(8) do with the assembling of information for preparation of returns. After Mr. Menefee had assembled the information and prepared the return he would regularly call Dr. Haskins' office and leave word there for him to come by Menefee's office and sign the return.

Dr. Haskins usually between March 10 and March 15 would hurriedly stop by Mr. Menefee's office and sign, in a great many instances, blank returns, and give Mr. Menefee a signed check, with the amount left blank, with Mr. Menefee to fill that in with the amount of the tax, with instructions to him to call the office and tell the girl how much the tax was so she could put it on the stub.

He never knew what the return contained nor how much tax he paid. He never stopped long enough to look into these matters. He knew nothing about his bank account. He was a man who had unbounded energy and he devoted all of it to the practice of medicine.

All I say, he retained people that he considered competent to handle these other matters for him, and having assigned those responsibilities to them, he depended entirely on them for them to do it correctly, and that explains the second circumstance, which is the omission of certain alleged capital gains from the sale of real estate.

As I previously stated, those were handled by Mr. John Crabtree and Mr. Cecil Phillips, with instructions to
(9) them that all information relative to rental properties,

either as to rents or as to sales, that information was to be given to Mr. Menefee for making the tax return, and Dr. Haskins thought that that was being done, and that they were included in the returns. So, as I stated, as far as we could determine, there was no fraudulent act ever committed by Dr. Haskins, and these fraud penalties asserted are asserted wholly on the basis of inconsistencies and omissions and understatements that Dr. Haskins knew nothing about.

Now, just this final word. When the investigation was begun for the years 1946, '47, '48 and '49 were open. The years 1941, '42, '43, '44 and '45 were closed by the statutes. After the investigation was completed Dr. Haskins paid all of the additional tax and interest on all the open years, and that has been paid and put into a suspense account. Any additional payment now is dependent entirely upon the finding of fraud, because the statute has run as to the years.

As to the years 1948 and 1949, Mrs. Haskins signed on the returns, and it is my understanding that there is no contention at all that she is part of any fraudulent act in the petition.

The Court: I would like to get certain things clear before you begin with the testimony. As I understand it, the statute of limitations is not involved with respect to the years 1948 and 1949. It is also my understanding (10) that fraud penalties have not been asserted for the year 1949.

I gather that there is no contest as to the amount of the deficiencies for any year, and that the position of the petitioner is that limitations apply with respect to the years 1941 to 1947.

Mr. Claunch: 1941 through 1945, Your Honor.

The Court: 1946, '47, '48, and '49 are open. Then you do not assert limitations as to '46 or '47?

Mr. Claunch: That is right.

The Court: Very well. Then 1941 through 1945, there is a claim of the statute of limitations and there are also allegations in the petition—I do not recall as to which.

years; it does not make any difference from the standpoint of proof as I see it—that certain payments were made to the Collector or the Director, and are in suspense accounts. I am not going to rule on it at the moment. I merely want to say that it is my understanding, unless something to the contrary is called to my attention, that all of the latter factors are problems of internal bookkeeping of the Director's or Collector's office, and that this Court has nothing to do with them, so strictly speaking they are not a part of the case.

The deficiencies are admitted, and if they have been paid, that will dispose of it. So for all practical (11) purposes we have the question of fraud and the question of the statute of limitations, and of course the respondent's position is that the statute does not apply because of fraud. Therefore the only contested issues that I know in this case are issues with respect to which the respondent has the burden of proof.

Now if anyone desires to either object or correct any of those statements I will be glad to hear it. Otherwise, Mr. Uretz, you may proceed.

Mr. Uretz: Yes, Your Honor. Before I proceed I would like to move to have all of the witnesses removed from the courtroom with the exception of Mr. Menefee, who is Mr. Claunch's accountant, and my revenue agent, Mr. Shrader, and the petitioner, Rebecca Haskins.

Mr. Claunch: And Mr. Harber, the executor.

Mr. Uretz: I have no objection to Mr. Harber.

The Court: Very well. The Clerk will arrange to have the witnesses excluded.

The Clerk: All witnesses in the Haskins case except those ated will please leave the courtroom.

The Court: Usually a recess is taken along about this time, because a straight three hours is quite an obvious strain on the reporter. While this is being worked out we might as well take the recess.

(A short recess was taken.)

(12) The Court: You may proceed.

Mr. Uretz: I wish to call Mr. Shrader to the stand.

JOSEPH E. SHRADER was called as a witness by and on behalf of the respondent, and, having been first duly sworn, was examined and testified as follows:

The Clerk: May we have your name, please?

The Witness: Joseph E. Shrader, S-h-r-a-d-e-r.

The Clerk: Thank you. Be seated.

Mr. Uretz: If it please the Court, before I proceed to examine this witness I would like to introduce some exhibits into evidence.

The Court: Very well.

Mr. Uretz: As Respondent's Exhibit A I wish to introduce the notice of deficiency in Docket No. 53505.

The Court: Any objection to these documents?

Mr. Claunch: No objection.

The Court: All right.

(Respondent's Exhibit A was marked for identification.)

Mr. Uretz: Exhibit B, notice of deficiency in Docket No. 52506.

The Clerk: Exhibit B.

(Respondent's Exhibit B was (13) marked for identification.)

Mr. Uretz: As Exhibit C, 1941 income tax return of John B. Haskins.

The Clerk: Exhibit C.

(Respondent's Exhibit C was marked for identification.)

Mr. Uretz: Exhibit D, the 1942 return of the same individual.

The Clerk: Exhibit D.

(Respondent's Exhibit D was marked for identification.)

Mr. Uretz: Exhibit E, the 1943 return of the same individual.

The Clerk: Exhibit E.

(Respondent's Exhibit E was marked for identification.)

Mr. Uretz: Exhibit F, the 1944 return.

The Clerk: Exhibit F.

(Respondent's Exhibit F was marked for identification.)

Mr. Uretz: Exhibit G, the 1945 return of John B Haskins.

The Clerk: Exhibit G.

(Respondent's Exhibit G was marked for identification.)

(14) Mr. Uretz: Exhibit H the 1946 return.

The Clerk: Exhibit H.

(Respondent's Exhibit H was marked for identification.)

Mr. Uretz: Exhibit I, the 1947 return of John B. Haskins.

The Clerk: Exhibit I.

(Respondent's Exhibit I was marked for identification.)

Mr. Uretz: As Exhibit J, the joint return of John B. and Rebecca B. Haskins for the year 1948.

The Clerk: Exhibit J.

(Respondent's Exhibit J was marked for identification.)

Mr. Uretz: As Exhibit K, the joint return of John B. Haskins and Rebecca B. Haskins for the year 1949.

The Clerk: Exhibit K.

(Respondent's Exhibit K was marked for identification.)

Mr. Uretz: As Exhibit L, a collective exhibit consisting of 12 pages, showing the computations of John B. Haskins' taxable income for the years 1941 to 1948, prepared by the revenue agent, Mr. Shrader, who is now on the stand, as a witness.

The Clerk: Exhibit L.

(15) (Respondent's Exhibit L was marked for identification.)

Mr. Uretz: As Exhibit M, photostats of the ledger sheets of the American National Bank and Trust Company, showing the deposits and withdrawals to the checking account of John B. Haskins for the period November 28, 1940, to January 17, 1944, and the accompanying deposit slips, which are copies made by the revenue agent. The originals, Your Honor, have been destroyed. These are the only copies available.

The Clerk: Exhibit M.

(Respondent's Exhibit M was marked for identification.)

Mr. Uretz: As Exhibit N, the ledger sheets of the Hamilton National Bank, showing the deposits and withdrawals to the account of John B. Haskins for the year 1943, and the accompanying deposit slips.

The Clerk: Exhibit N.

(Respondent's Exhibit N was marked for identification.)

Mr. Uretz: They were also prepared by the bank. Those are all the exhibits I have at this time.

The Court: I will have to ask counsel to observe from time to time the audience here as to whether any of their late witnesses may have drifted in, because the Court has no way to tell who may be witnesses.

(16) Mr. Uretz: Your Honor, I ask that all the exhibits which have been marked be received in evidence at this time.

The Court: Any objection, Mr. Claunch?

Mr. Claunch: No objection.

The Court: Very well. They will be received.

(Respondent's Exhibits A through N, inclusive, were received in evidence.)

DIRECT EXAMINATION BY MR. URETZ.

Q. Mr. Shrader, where do you reside? A. Chattanooga, Tennessee.

Q. By whom are you employed? A. Bureau of Internal Revenue.

Q. In what capacity do you serve with the Internal Revenue Service? A. Internal revenue agent.

Q. How long have you been an internal revenue agent? A. Since April of 1944.

Q. Would you state briefly your educational background and qualifications, please? A. I am a high school graduate, and I have a B. B. A. degree from the University of Chattanooga in accounting.

Q. By whom were you employed prior to employment with the Internal Revenue Service? (17) A. Tennessee Electric Power Company from 1924 to 1939 in the accounting department. T. V. A. from 1939 to April of '44, in the plant department as accountant.

Q. You were doing accounting work with both those organizations? A. That's right.

Q. And after you left T. V. A. you came to work for the Internal Revenue Service, is that right? A. Yes.

Q. In the course of your duties as an internal revenue agent, were you assigned to investigate the income tax returns of one John B. Haskins? A. I was.

Q. And what years did your investigation cover? A. From 1941 to 1949, inclusive.

Q. Do you recall, Mr. Shrader, what precipitated the investigation of Mr. Haskins' returns? A. While examining another return I noticed that this party had acquired real estate from Mr. Haskins at the cost of about $40,000, I think it was, and Mr. Haskins' return was in our office at that time, and I examined his return and found there was no report of it on his return.

Q. When did you begin your investigation of Dr. Haskins' income tax returns? A. June 6, 1950, I think it was.

(18) Q. June 6 of 1950? A. That is correct. That was the first contact with it.

Q. I now ask you when you began your investigation—was that when you began your investigation? A. I would say yes. My reports—I ran down that one item, and I couldn't call that the beginning of the examination, I don't think.

Q. I see. When did you first contact Dr. Haskins? A. June 6, 1950.

Q. What did you ask him at that time? A. We asked him for his records for the years 1947—I think our first request was for the years 1947 through '49, I believe was our first request.

Q. You first requested that Dr. Haskins furnish you with his books and records for the years 1947 through 1949? A. That's right.

Q. And what did these books and records consist of? A. They consisted of a cash receipts ledger, an expense book showing the expenses of the operation, accounts receivable cards, and duplicate receipt books for most of those years. The receipt books didn't cover quite all of them.

Q. When you say duplicate receipt book, you mean duplicate of receipts issued to patients? A. Issued to patients on payments.

(19) Q. Now, did you later request the taxpayer to furnish you with his books and records for the years 1941 through 1946? A. We did.

Q. And what books did he furnish you for those years, what books and records? A. There were practically no books for the years '41, through '43—that is, there were no books. There were some receipt cards, a few cards dated back that far, and no cash receipts ledger or anything pertaining to expense. We did get the cancelled checks for those years, however.

Q. For the years '44, '45 and '46 what records did he produce? A. Well, we got records for the years '41, '42 and '43. There were no records, only cancelled checks for the years '44 through '46. We got the receipt books and cancelled checks, and the expense books.

Q. Did you get the cash receipts ledger? A. We did for those years, '44 through '46.

Q. '44 through '46? A. Yes.

Q. And how about the duplicate receipts that were issued to patients, were they made available? A. They

were made available from the latter part of '45 on, none in '44.

(20) Q. How about the accounts receivable cards? A. The bigger part of them were there.

Q. To summarize, you got all of the records that you have mentioned for the years 1944 through '49? A. Correct.

Q. But you got nothing but some cancelled checks for the years '41 through '43? A. That's right.

Q. Now, were you able to determine the taxpayer's income for the years 1941 through '43 from the books and records he furnished you, namely, the cancelled checks? A. Could not.

Q. Well, now, in the absence of adequate books and records, how did you determine the taxpayer's income for those years? A. We ran the deposits.

Q. By the bank deposits method? A. Correct.

Q. Now, will you please state in detail how you determined the taxpayer's income by the bank deposits method for the years 1941 through 1943? A. We asked the doctor where he maintained accounts, what accounts he had in the banks in Chattanooga, and we checked other banks there for accounts, but we found none other than the ones which he had designated as being banks he (21) was using, and we went to these banks and made duplicate deposit tickets, or copied the deposit tickets which he had deposited in these accounts, and we made an analysis of these tickets and eliminated from the deposits there all transfers, re-deposits and rent. He was getting considerable rent, but we were able to eliminate that. We could not eliminate director's fees and dividends; because the larger part of those fees and dividends were coming from companies of which he also was getting professional income from.

The Court: What do you mean by transfers?

The Witness: By transfers, Your Honor, from one bank account to another.

The Court: All right. Were these eliminations made in consultation with Dr. Haskins?

The Witness: They were—that is, his accountant.

By Mr. Uretz:

Q. Now, I refer you to Exhibit L, which is the tables that you made up in connection with the computation of Dr. Haskins' income. Will you go through those exhibits, referring to page number, and show us exactly how you determined the doctor's professional income by the bank deposits method for the years 1941 to 1943, inclusive? A. Well, for the year 1941 I had additional income, net income, from profession of $21,404.78. That is on the (22) bank deposit basis. And I had total deposits, after eliminating rents, re-deposits and so forth, of $29,482.52, and there were some expenses paid by cash which I had to determine also in order to see the amount of cash that was not deposited. The expenses were $8,581.32, and of this amount $4,928.94 was by checks. We could only assume that the other was paid in cash, salaries and items of that kind, and I have one estimated figure in here of cash not deposited, that is, we were pretty sure, and I think it was agreed upon that the doctor did use some money for personal expenses, that was never deposited.

Q. Just a moment, Mr. Shrader. What page of the exhibit now are you reading from? A. That is page 3.

Q. Page 3. A. Excuse me.

Q. All right, go ahead. A. That figure for the year 1941 is $2,000, giving a total of $35,184.90, and then to get my dividends and annuities and items of that kind out of there, I used the figure on the return and subtracted it from the total, $3,389.75, giving a net figure from professional receipts of $31,749.15, and gross professional receipts part of the return was $10,340.37, giving an additional professional income of $21,404.78.

(23) Q. All right, Mr. Shrader, after all that then you determined that the doctor had additional professional income of $21,404.78. What other adjustments did you make for the year 1941? A. He had capital gains, ordi-

nary gains, and then in addition to that I adjusted the depreciation. He had capital gains of $83.08. That is page 12 in the exhibit.

Q. I refer you to page 1 of your exhibit for the moment. A. That is where I am picking that up. Gains from sale of capital assets were $83.08. Ordinary gains, $136.82, and then I allowed for additional depreciation from what was shown on the return of $1,547.33, or a total of other income of a minus figure of $1,327.43, or a total additional income for that year of $20,077.35.

Q. Well, what you did was, you added to the doctor's additional professional receipts gains from the sale of capital assets which he had not reported on his return, is that correct? A. That is correct.

Q. Had he reported any capital gains on his return? A. No, no capital gains.

Q. All right. Just one question before we get to the year 1942. Did you eliminate all non-income items from the bank deposits? A. I did—that is, with the exception of dividends and (24) annuities and items of that kind, which I referred to, and did eliminate at a later point. I couldn't eliminate it in my deposit analysis.

Q. Now, for the year 1942 was your procedure the same as for the year 1941? A. It was the same.

Q. And by the bank deposits method what did you determine the doctor's additional professional receipts for the year '42 to be? A. $23,610.28.

Q. That is additional professional gross income? A. That's right.

Q. And what adjustments did you make to that figure? A. There was an error of $10 on Line 16, Page 4, of his return, and a gain from sales of capital assets of $88.96, and again I allowed additional depreciation of $1,483.02.

The Court: How much professional income did he report for that year?

By Mr. Uretz:

Q. Do you have that figure, Mr. Shrader? A. I don't have it.

The Court: Don't take time to get it. I thought you might have it.

Mr. Claunch: I have it, Your Honor, if I may offer it.

(25) The Court: Yes, I will be glad to have it.

Mr. Claunch: $18,840.27.

The Court: All right.

The Witness: I have it here.

The Court: It has been given now, Mr. Shrader.

By Mr. Uretz:

Q. Mr. Shrader, you just mentioned, I think, the depreciation figure of $1,483.02 which you had subtracted. A. That's right, which I put in there as under other income and expenses, and that gives me a minus figure of other income and expenses of $1,384.06, or additional income of $22,246.22.

Q. All right. Now, Mr. Shrader, for the year 1943, was your procedure the same? A. The same as the other years.

Q. You determined the decedent's, John B. Haskins, gross receipts by the bank deposits method? A. It was $26,054.98, and I again had other adjustments rather than professional income.

Q. That was additional professional income, was it, Mr. Shrader? A. That is right, additional.

Q. All right. Then what adjustments did you make to the figure $26,054.98? A. I had $60 from annuities, capital gains or gains (26) from sale of capital assets, $6,809.77; depreciation, a minus figure, $1,588.25, or a total other income $5,282.52. Additional income, $31,336.50.

Q. All right. You say you added to the decedent's income $60 from annuity income that he had? A. That's right.

Q. Had he reported any annuity income? A. He had not.

Q. And you also added to his taxable income $6,809.77 from capital gains. Had he reported any capital gains in the year 1942? A. No.

Q. As a matter of fact, has he reported any taxable gains for any of the years here in question? A. I believe not.

The Court: They were long term capital gains?

The Witness: I believe in all instances, Your Honor, they were.

The Court: Would it be convenient, Mr. Uretz, for either you or counsel for the petitioner—the returns are in evidence—but it would be convenient to me if it were stated in connection with the adjustment of professional income what professional income was actually reported each year as you go along. Do you have that figure available?

Mr. Uretz: I think Mr. Shrader has that figure.

(27) By Mr. Uretz:

Q. Mr. Shrader, will you get those figures, please? A. I think I have it here.

Mr. Uretz: All right. Let's recap.

The Court: I don't want to confuse his notes.

Mr. Uretz: That is all right, Your Honor. We prepared those figures.

By Mr. Uretz:

Q. For the year 1943 what did the doctor report on his return as gross professional receipts? A. $18,739.67, whereas we have gross receipts of $44,794.65.

Q. Now you have completed your statement with respect to the year 1943, have you, Mr. Shrader? A. I have.

Q. Now, I direct your attention to the year 1944, and I believe that that is the first year in which records were available from which you could determine the taxpayer's income, is that right? A. It is.

Q. Now, will you describe for us how you determined that the taxpayer had additional unreported income in the years beginning with 1944? A. There were a number of items making up the additional income there. The first item that I have here on page 1 (28) of the exhibit

is accounts given collection agencies, which were paid in the doctor's office. There were none of those got in the cash receipts ledger, and in this particular year there is $2,017.55 of that type of receipts, and Item 4 on page 1 of the same schedule, I have an error in addition of cash receipts ledger—no, beg pardon. It is credits to accounts receivable cards. That is where there were credits given to patients on the accounts receivable card, but did not get on the cash receipts ledger.

Q. That is Item 3, is it, Mr. Shrader? A. Item 3, yes.

The Court: What is the amount?

The Witness: That is $19,459.79, and Item 4, Exhibit D, page 7 of the return, is errors in additions to the cash receipts ledger. There were errors; we found $4,022.90, that the ledger was added over that much. The figure they had was that much too great, and our next item is Item 6 on page 1, the excess of cash receipts ledger over gross receipts per return. That is, the receipts ledger showed one figure, whereas the return, when filed, was another. There was a difference in that year of $18,663.99.

Q. All right. Now, Mr. Shrader, stop there for just a moment. What was the total figure shown in the cash receipts ledger for the year 1944? A. The total figure per ledger was $37,953.66, whereas (29) the return showed $19,289.67.

Q. And that's where you get your difference of $18,000? A. That is the difference, and it is a matter of subtraction.

Q. All right. Go on. A. Item 7, page 1, is collections or commissions on collections. The doctor would turn over his older accounts to the collection agencies. They would send him a check in net with their commission taken out, and that was posted to the day book, and in addition to that they claimed the commission as an expense, which was a double up proposition. In this particular year it is $1,355.21.

Q. By a double up proposition, I presume you mean that the taxpayer was taking a double deduction for a

portion of those receipts? A. Yes. This check was a net figure which was posted in the day book and the commission was not in that figure, and they took the commission as a deduction in the expense part of the return.

Q. O. K. Continue. A. That gives a total of professional receipts for '44 of $37,473.64, and I had other adjustments in addition to that: Annuities again in this year is $271.50. Gains from sale of capital assets, $6,027.92. Depreciation, a minus figure again, $1,124.44. Total other income $5,175.98. (30) Additional income, $42,645.62.

Q. Mr. Shrader, Item 3 on page 1 of Exhibit L you spoke of as credits on the accounts receivable cards omitted from the cash receipts ledger. As I understand, these were credits on patients' accounts receivable cards which credits had not been posted to the cash receipts ledger, is that correct? A. That is correct.

Q. And about how many omissions were there in the year 1944, if you know or recollect? A. I don't know how close I could get. There were approximately 5,000 or something like that, in all the years.

Q. There were 5,000 omissions? A. Or more, in all the years. I would hate to make a statement.

Q. That is all right. Now, Mr. Shrader, describe how you determined the taxpayer's income for the year 1945. A. It was determined in the same manner from the doctor's books there. Of course the figures vary from the other years.

Q. If you don't mind, would you go through it rather quickly, item by item, so that we will know exactly how you determined the income? A. My first item again is collections in doctor's office of accounts given to the collection agency, and that is $1,256. Credits to accounts receivable—

(31) Q. Just a minute. If you don't mind, I will interrupt you there. That figure $1,256 is the amount that was collected in the doctor's office from patients whose accounts he had given to collection agencies? A. That is right.

Q. And they have not been entered on the cash re-

ceipts ledger? The payments had not been entered? A. They had not.

Q. Had they been entered on the accounts receivable cards that you recall? A. In some instances they were.

Q. But at any rate they didn't find their way into the cash receipts ledger? A. No.

Q. Continue. A. Credits to accounts receivable ledger of $15,703.64. Errors in addition is a negative figure in this case, $158.20. Payments by industries omitted from the cash receipts ledger of $916.50. Excess of cash receipts ledger over receipts per return, $27,744.00.

Q. Now, referring to that figure $27,744.00, what was the amount of gross professional income as shown by the gross receipts ledger for the year 1945? A. That was $48,234.27.

Q. And what amount did the return show the doctor reported (32) that year? A. $20,390.47, a difference of $27,744.00.

Q. Continue. A. My next item in '45 is commission on collections of $1,209.75. Duplicate receipts omitted from the cash receipts ledger, $366.97, giving me a total additional gross receipts of $47,355.06.

Q. Now, Mr. Shrader, let me ask you this question: That Item 8 which you just read, duplicate receipts omitted from receipts ledger, what is the nature of that item? A. That is the items where they apparently gave receipts and I think that that is what the girl stated in all cases to the customers coming in there and paying here. Now with a check they did not get a receipt, nor items mailed in, and these duplicate receipts were used largely to post the cash receipts card, and in that particular year we only had the receipts for the latter part of the year '45, but we did find $366.97 of receipts which did not appear on the cash ledger —duplicate receipts.

The Court: When you speak of commissions, what kind of commissions are you talking about?

The Witness: That is a commission that these collection agencies charge the doctor for collecting outstanding bills.

The Court: All right.

(33) By Mr. Uretz:

Q. Continue. A. The total additional professional income in 1945 was $47,355.06. Other income, I have annuities of $1,282.50. Gain from sales capital assets, $606.09. Additional depreciation, -$872.75. Total other income $1,015.84. Total additional, all income, $48,379.00.

Q. All right. Now, Mr. Shrader, let's continue with the year 1946 very briefly and quickly, if you please. A. My first item is collections in the doctor's office of accounts turned over to the Bureau of $312.50. Credits to receivable cards of $9,949.03. Errors in addition to the receipts ledger, $1,021.57. Excess of cash receipts ledger over gross receipts, $6,596.87.

Q. Well, now, what were the total receipts per gross receipts ledger? A. $35,405.87, whereas the return was $28,809.

Q. Leaving a difference of? A. Leaving a difference of $6,596.87. Commission on collections, $1,513.47. Duplicate receipts, $11,867.40. Total, $31,259.84. Other income, annuities, $1,620.00. Depreciation adjustment, $179.65. Total other income, $1,440.35. Total additional income, $32,700.19.

Q. Now, Item 8, duplicate receipts omitted from receipts ledger, the figure you gave us, I believe, was $11,867.40. Now that figure, as I understand it, represented (34) receipts which were issued to patients who had made payments to the doctor or in the doctor's office, which payments were omitted from the cash receipts ledger? A. That is right.

Q. O. K. Now, will you go on to the next year, 1947? A. The first item in that year is credits to receivable cards which were not on the cash receipts ledger, $7,287.68. Errors in addition in the cash receipts ledger of $777.62. Excess of cash receipts ledger over gross receipts per return, $5,380.30.

Q. What were the gross receipts as shown by the doctor's ledger? A. $39,997.85.

Q. What did he report in his return? A. $34,717.55, a difference of $5,380.30.

The Court: That was a difference between his receipts book and what he reported. That does not include what was on the accounts receivable cards that never got into the return?

The Witness: That is right, Your Honor.

The Court: And that was how much?

The Witness: That was, in this particular year, $7,287.68.

The Court: The actual difference was somewhere around twelve or thirteen thousand dollars for that year, (35) between reported professional income and income from all sources?

By Mr. Uretz:

Q. Mr. Shrader, I think if I ask you this question you can answer the Judge's question. In addition to items which were in addition to the amounts shown on the accounts receivable cards which were omitted from the cash ledger, there was also an amount of $5,252.22, representing duplicate receipts, that is, that the patients had paid, amounts that the patients had paid that didn't appear on the cash receipts ledger, isn't that so? A. That is right.

The Court: I see. All right. In order to follow it, as I gather it, there were really then three fundamental sources. One was the receipts book, one was an accounts receivable, cards receivable, and then there was a third which was duplicate receipts.

The Witness: Yes, sir, duplicate receipts where they had given the customer a receipt but they retained the duplicate.

The Court: So that to get the omitted professional income you add those three together and subtract the amount?

The Witness: That is correct, Your Honor.

By Mr. Uretz:

Q. Now, have you finished? (36) A. I think we were through with professional income, I believe it was.

Q. Continue.

The Court: You had not gone any further than that for that particular year.

The Witness: However, the total there of professional income, if I haven't given it, was $31,259.84. Other income, annuities, $1,620. Additional depreciation, $179.65, or a total of other income, $1,440.35. Total additional income $32,700.19.

By Mr. Uretz:

Q. All right. Mr. Shrader, you can go on with the year 1947. A. Credit receipts cards is $7,287.67; errors in addition, $777.62. Excess cash receipts ledger over gross receipts per return, $5,380.30. Commission on collections, $1,300.28. Duplicate receipts, $5,252.22. Total additional income, professional income, $19,998.10, and there is additional expense in there on that year, $1,366.50, which the doctor had not taken on the return. It leaves a net figure of $18,636. Other income, annuities—

The Court: As against the amount reported?

The Witness: That is a net figure there.

The Court: That is all right.

The Witness: I have the amount.

(37) The Court: Don't pause for that.

The Witness: I have it here, but I can't put my finger on it right now.

The Court: Go ahead with your testimony.

The Witness: Other income, annuities, $2,018.12. Additional depreciation, $364.65. Total other income, $1,653.47. Additional all other income, $20,285.07.

By Mr. Uretz:

Q. That concludes the year 1947? A. That is right.

Q. Now, the last year, '48. A. 1948, our first item there is excess of cash receipts ledger over return, that is $3,000.00 in that year. Commission on collections, $612.33, or a total other income, $3,612.33. Less $35.00 expense which was not claimed by the books, leaving a net figure of $3,577.33. Other income, annuities, $2,602.50, and I am allowing here a capital loss carried over which I believe he had not claimed of $1,000.00. Adjustment on depreciation, $1,621.79. By the way, that is a negative figure. I am just

allowing that much in this year. A total of other income, $3,224.29. Total all other income, $6,801.62.

The Court: I want to get clear here one particular detail, you said with respect to depreciation it was a negative figure. You mean negative as far as allowance is concerned, but positive as far as additional income?

(38) The Witness: I am allowing more depreciation than what the return shows.

The Court: That's what I wanted to get clear, because your testimony indicated the opposite. Some of the earlier years it was the same thing. In this case you allowed him that much more, when you said it was a negative figure.

The Witness: I allowed him that much less; in other years I allowed him more, and in '48 I allowed him less, $1,621.79, than was claimed on his return.

The Court: Well, you did disallow some depreciation for this particular year?

The Witness: I did in '48. I disallowed $1,621.79.

The Court: All right.

The Witness: All other years I allowed him more.

The Court: You used the expression negative figure to mean the opposite in earlier years?

The Witness: I think I used it wrong in this instance.

The Court: All right.

Mr. Uretz: Your Honor, Exhibit I points that out.

The Court: I do not think there is any problem on it, except that sometimes we do get a little twisted, and now is the time to clarify it.

(39) By Mr. Uretz:

Q. That completes your computations for the years 1941 through 1948, is that right, Mr. Shrader? A. It does.

Q. Now just briefly, turn to page 2 of Exhibit L. As I understand that, that is a month by month breakdown of collection bureau accounts which were collected in the taxpayer's office and which did not find their way to the cash receipts ledger, is that correct? A. That is right.

The Court: That is for 1948?

Mr. Uretz: For the years 1944, '45 and '46.

The Witness: There was none of that after that year, after '46.

By Mr. Uretz:

Q. Now, page 3 of Exhibit L shows how you computed the additional gross receipts for the years '41, '42 and '43, is that right? A. Yes, sir, bank deposits method.

Q. And the total additional professional income for those years, that is the last figure that appears in one of the years, is the figure which appears on page 1 of Exhibit L? A. That is right.

Q. Now, page 4, as I read it, is a month by month breakdown of Dr. Haskins' deposits in the various banks that (40) he did business?

The Court: Is not all of that apparent on the face of the exhibit?

Mr. Uretz: Yes, sir, it is apparent on the face of the exhibit.

The Court: I see no need of repeating it.

By Mr. Uretz:

Q. Now, I call your attention to page 7 of Exhibit L. That page is entitled "Errors in addition of cash receipt ledger." Now, you notice in the year 1944, for the month of January there is a figure $1,000; February there is a figure of $1,000; April a figure of $1,000; and May a figure of $1,000, indicating—they are in brackets—which would indicate that the cash receipts books were added wrong, so that they showed that he had $1,000 more gross receipts than the books would show, is that right? A. That is right.

Q. Do you wish to testify as to how that occurred? A. Well, in these four particular months here there were very few cash receipts posted on the ledger, probably two or three hundred dollars a month. At the end of the month whoever added it would add $1,000 in addition to what was actually posted there.

Mr. Uretz: That is all the questions I have of Mr. Shrader.

(41)

CROSS EXAMINATION BY MR. CLAUNCH.

Q. Mr. Shrader, referring to that 1944 item, as I understand from your computations there was an item of $4,022.90 too much reported in the way of errors in additions on the cash ledger? A. That is right. There was that error that the ledger totals had there. It was too much.

Q. The same thing was true to a lesser extent in 1945, was it not? I believe you gave a figure of $158.20? A. That was added less that year. The additions were less than what they should be.

Q. This item that is repeatedly occurring in here with reference to commissions on collections, did your investigation show that that was obviously a bookkeeping error, the girls in the office didn't know what they were doing? A. I would say it was, yes.

Q. Didn't you find that there was considerable confusion on the part of the so-called bookkeepers in the office with reference to how to keep the books? A. Well, that is the biggest item there that I would say was not knowing. The girls definitely I do not think knew what to do.

Q. It was quite apparent that there were quite a few girls making entries on the books? (42) A. Well, there are different handwritings of course in there. I didn't see all the girls that had worked in there.

Q. You ran into repeated instances of mistakes in bookkeeping? A. That is right.

Q. And very serious ones? A. Rather serious.

Q. Mr. Shrader, one item that is confusing me a bit, as I understand when a patient came in a history card was made for him. Then he came out to the front and they made up a patient's ledger card. They also had these duplicate receipt books. Now, you have added back a substantial item, both from the duplicate receipt books and from the patients' ledger cards? A. That is right.

Q. The thing that confuses me and has continued to do so is how could you tell whether or not you were duplicating some of those additions. It seems to me that if you

took them off of the duplicate receipt books and also took them off of the patients' ledger cards, that in a great many instances you would be putting in duplicates of additions? A. You had to check very closely. We started out thinking we could pick up all the additional income from the duplicate receipts. We found later we could not get it that (43) way, but we were trying to avoid going through all those cards, is what we were trying to avoid, because that is a job. Of course we did have to check very close to avoid duplicating, as it was very hard to keep from it.

Q. There were thousands of those patients' ledger cards? A. Yes, thousands.

Q. Did you have any assurance in your mind that you did not duplicate some of those that were on duplicate receipts? A. As far as humanly possible I don't think we did. We checked very close. I still have my transcripts on them, and Mr. Menefee, by the way, checked my papers quite awhile and I think he found $45 in there in working I don't know how many days. He did find $45, I think.

Q. Now, I believe you mentioned there were a number of items that should have been taken as deductions which repeatedly were not taken. For instance, in 1947 there was a salary or commission paid to Dr. Clements, I believe, of some $1,366.50 which should have been taken as a deduction as a legitimate business expense, and was not taken at all. A. That is right. It should have been taken.

Q. And a smaller item for the following year in the same connection? A. Yes.

Q. Now, in cases of this type, Mr. Shrader, you usually (44) resort to one of three or four methods, one of which is the bank deposits method, and one, of course, the net worth method. That is true, isn't it? A. Yes.

Q. You did not find it necessary in this instance to resort to the net worth method? A. No.

Q. The reason for that, of course, was obviously that you found that the bank deposits method was sufficient? A. Yes.

Q. In other words, that there was on the doctor's

part no effort of concealment? A. The money was going in the bank.

Q. I beg your pardon? A. I say the money was being deposited in the bank.

Q. Everything was being put in the bank? A. Substantially all, as far as I know. We did add in some extras, very small.

Q. Of course, it is a routine proposition and I am sure you followed it in this instance to ask the taxpayer immediately to go with you to his safety deposit box? A. Yes. We entered the box, his lock box.

Q. You always do that—I mean you usually do? A. Normally. Let's put it that way. I would say normally.

(45) Q. And did he go with you? A. He did. He met us there and went in with us.

Q. Was there anything of value in the box? A. No. There was some currency, a little bit; it didn't amount to anything.

Q. Nothing of any substantial nature whatsoever? A. No.

Q. He had no bank accounts under any assumed name? A. If he did we didn't find them, no.

Q. I feel you are quite competent in that sort of thing and if there had been you would found them, Mr. Shrader. I believe you stated he gave you the names of several banks where he had deposits? A. He did, and gave us authority to get the banks to give whatever information we wanted.

Q. I believe you also stated that you went to other banks and checked to see if there were any others, and found none? A. We did.

Q. In other words, he told you all his bank deposits and where they were? A. Yes, sir. He told us where they were.

Q. None of his bank accounts were under any assumed name? A. No, sir.

(46) Q. He had no double set of books or any false entries which you found? A. No, I would say not.

Q. He had no fictitious transactions in the names of dummies or figureheads? A. No.

Q. I don't believe you found in all these years any instance of his trying to deduct any personal expenses as business expenses? A. We have allowed—with the exception of the depreciation—we have allowed the expenses, but gave him that one item up there.

Q. In other words, after having made a very complete audit you found that the basis for these fraud charges was wholly on the ground that the returns did not show all of his professional receipts, and that certain alleged gains from the sale of real estate were not shown in the returns? That's true, isn't it? A. Yes.

Q. With the exception, of course, of the matter that you mentioned as to annuities. I believe you satisfied yourself at the time that he was perfectly honest in claiming that they were not taxable? A Yes, he took that item up, that the salesman told him it was not taxable, it was a return of capital.

(47) Q. Insofar as the omission of annuities in and of themselves and by themselves is concerned, you have no feeling that there was any intended fraud involved in that omission? A. No, not in that one item. Oh, no, I would say not.

Q. Now, didn't you find, as far as he was able to do in view of his busy practice, that he was very cooperative with you? A. He cooperated with us, yes, and his employees did.

Q. Did he ask the certified public accountant to cooperate with you? A. Yes, sir.

Q. Which he did? A. Yes.

Q. And I believe Mr. Harber also cooperated? A. Yes. Mr. Harber came in a little later.

Q. In other words, altogether you boys got together and everybody tried to reach autonomy and we have not particular crow to pick here with reference to the finding of income, whether it was annuities or capital gains, or what it was. A. Beg your pardon, I don't think I followed you on that.

Q. I do think that my question was complex. I mean that the end result was that all of you were working to-

ward the same end, and there was cooperation throughout? (48) A. That is right.

Q. Mr. Shrader, didn't it take a great deal of time to go back and make these audits? A. I spent about four months on it. A special agent did some work on it, and I spent about four, maybe five, something like five months.

Q. You did most of the work yourself? A. I did.

Q. This investigation revealed to you, didn't it, Mr. Shrader, that Dr. Haskins was a very busy practitioner? A. Yes. He had a good business there—good practice.

Q. Did you also observe in your contacts with him that he was a man who had very little time to spend on details? A. Oh, he had nothing to do with his books. He spent no time on them at all.

Q. Had nothing to do with his books? A. So far as I know. I would say not.

Q. I may have brought this out before, but did you determine that there had been a great many girls in the office or quite a few girls in the office working on his books? A. Yes, there had been several. Of course I don't know all that had been there over this period.

Q. And you found the whole office, as far as bookkeeping proceedings were concerned, pretty much in a confused state? (49) A. They weren't too well organized.

Q. Do you know how many girls—well, I don't suppose you do, but I can ask you—how many girls worked on these books at a time? A. I don't know.

Q. You didn't discover that? You didn't discover whether it was the responsibility of everybody or of one particular girl? A. I did not.

Q. Were you in the office frequently during this time? A. Yes, I was in there a number of times and spent several days there. I worked there part of the time and worked in our office part of the time.

Q. How many girls were there in the office at that time, do you know, approximately? A. There was two one time. It changed a time or two. They got a new one in there while I was in there. Miss O'Neill, I believe, quit before I got through there and there was some change while I was there.

Q. What were the girls doing, if you observed? A. Different things.

Q. Well, they were doing about everything that was to be done in a busy doctor's office? A. Yes.

Q. Making surgical dressings, making up reports, insurance (50) reports, X-rays, metabolisms, blood counts, keeping books, doing everything that came up to be done? A. Miss O'Neill apparently was. She was pretty well doing the bookkeeping.

Q. How long have you been acquainted with Mr. Menefee, the accountant? A. Since I came in the service in '44 or immediately thereafter.

Q. You know that he is a certified public accountant and practices as such in Chattanooga? A. I do.

Q. That he has done that for a number of years? A. Ever since I have known him, and a good many years before I knew him, I think.

Q. Does he do a considerable practice? A. Yes.

Q. In tax matters? A. Yes.

Q. You have had occasion to have numerous conferences with him? A. I handled several of his returns, non-fraudulent returns. That is, I determined as non-fraudulent.

Q. He has quite a few tax clients? A. That is right.

Q. He makes returns for quite a few and is considered (51) a very able and competent certified public accountant, isn't he? A. Yes, I would say he is.

Q. Now, Mr. Shrader, do you have any—do you recall that the work papers, all of Mr. Menefee's work papers, books and everything else were turned over to you at the time of the investigation? Do you recall that? A. They were, a number of work papers turned over. Now the special agent, if I remember correctly, got those papers.

Q. I beg your pardon? A. The special agent, if I remember correctly, got those papers of Mr. Menefee's.

Q. So far as you know, were all those papers returned to Mr. Menefee? A. As far as I know, yes.

Q. Do you recall that some of them were lost while they were in the possession of the special agent, and were not returned? A. No, I do not.

Q. Now, you made certain adjustments based on the omission of alleged capital gains and losses from the returns in several of these years. I believe if you will check, and tell me if I am correct on this, all capital gains that were not returned had to do entirely with real estate? (52) A. Yes. That is, all capital gains he had during the period.

Q. During these years there were several transactions in securities which, as I recall, ordinarily resulted in losses? A. They were all losses.

Q. But insofar as capital gains or losses were concerned, the only omission was from real estate? A. That is right.

Q. Those that were included were in every instance relative to securities? A. Yes. And I will say they were all losses.

Q. All losses. Now, isn't it also true that in making this audit you were attempting to do a very fair job—which, incidentally, I want to say I think you have? A. Yes.

Q. That there were quite a few adjustments that you found during these years that had to be made in Dr. Haskins' favor and you made them? A. Yes, there were some in his favor.

Q. To enumerate those rather briefly, in 1941 the return deducted depreciation of only $1,375, whereas it should have deducted more than twice that amount, an increase of $1,473 or a total of $2,922.33, and you adjusted it to that extent in Dr. Haskins' favor? (53) A. Yes.

Q. In 1942 the return again showed one figure on depreciation of $1,375, the same figure that had been used in prior years, and you increased that by $1,483.02 in the taxpayer's favor? A. Right.

Q. In 1943 the return again showed this same depreciation figure of $1,375, and you increased that by the amount of $1,588.25 in the taxpayer's favor? A. Yes, right.

Q. In 1944 the return again deducted $1,375 in depreciation as a composite figure, and you increased it by $1,124.44 in the taxpayer's favor? A. Correct.

Q. In 1945 you increased depreciation from the same figure of $1,375 to $2,247.75 in the taxpayer's favor? A. Correct.

Q. In 1946 you increased depreciation of $1,375 to $1,554.65, and during that year you also increased contributions from $2,782.65 to $5,587, an increase of $2,804.35? A. That is correct.

Q. Now, of course, in all fairness that increase in contributions was partly due to the increase in income? A. That is right. The limitations caught it the first time.

(54) Q. In other words, he had given contributions larger than the 15 per cent that was allowed? A. That is right.

Q. The increased income gave him an increased deduction? A. It did.

Q. It was also true in that year that he did fail to take another charitable contribution of $587, which you added in in his favor? A. Yes.

Q. In 1947 you increased depreciation by $364.65, is that right? A. Yes.

Q. You increased the contributions that year by $1,001.98 which was attributable to, in part, increase in income, and there was an additional contribution of $125? A. That's right. The limitation again caught that.

Q. And another very important item in that year, in 1947, didn't you find that he had paid real estate taxes of $2,661.54 which hadn't even been taken off the return, and you allowed that? A. That's right.

Q. Now, in 1948, when you went into the year '48, insofar as the return was concerned he had a capital loss carryover of $5,107.34, carried over from '47, and the return was prepared without taking that into consideration at (55) all and you picked it up and gave him $1,000 credit that the return hadn't given him? A. That's right.

Q. Then in 1949 he still had a capital loss carryover of $2,840.14 which the person who prepared the return had not used in his favor, and you picked that up and gave him $1,000 credit that the return had not given him? A.

Yes, and showing the balance on that loss to be carried over.

Q. You have had a great deal of experience in these things, Mr. Shrader. Isn't it ordinarily true that in cases where there is fraud or wilful intent on the part of the taxpayer to evade taxes, you seldom find him making such substantial mistakes against his own interest? A. It is rather often I find errors both ways, Mr. Claunch. This is more than the average; I will state it that way.

Q. But you very seldom find it so substantial in favor of the taxpayer. Now in connection with your investigation, Mr. Shrader, you proceeded, of course, upon the assumption that Dr. Haskins personally knew what his returns showed as to the items of income and deduction? A. Yes, I would assume that he did.

Q. And of course it was upon that assumption that the assertion of fraud penalties was made? It would have had to (56) be? A. Yes, that he knew something about what was being reported.

Q. As to '41, '42 and '43, where you set the deficiencies up on the bank deposit method, you used the completely negative method, did you not? In other words, you charged the taxpayer with the total amount of all deposits for that year, and then you took out only those items that you were specifically able to identify as non-income items for those years? A. Yes. That is, we checked for transfers and the rental income; that was very easy to segregate.

Q. In other words, that basis for 1941, '42 and '43 had to be made and the only way you could make it was on a negative basis? A. I don't understand what you mean, on a negative basis.

Q. I mean by that that you took the total figure, you took out those items that you could identify as being non-income items. There may have been others that were non-income items that you didn't find? A. Yes, there could always be items get by there.

Q. Let me ask you this, Mr. Shrader: Do you remember Mrs. O'Neill? A. Yes.

(57) Q. Did she appear to you to be a rather competent young lady? A. She's a very smart girl.

Q. She was his employee from July, 1947, until August, 1950. Didn't you find that after she went in there that there was quite an improvement made in the confusion and that after she went there, there were a number of items that were incorrectly reported previously had decreased a great deal? A. Yes, the number of errors and the like did decrease, and the amount of income that I picked up decreased, of course, too.

Q. In a year or two after she got there, she got that to a point where the year 1949 you didn't feel that you had to assert the fraud penalty, is that right? A. That's right. Annuities were approximately the only thing picked up in '49.

Q. You did pick up annuities in '49? A. Yes.

Q. They were again omitted, but no fraud penalty was asserted? A. No. That's right.

Q. But after she got there and got time to get into the books, obviously from the examination of the books, the confusion that existed had cleared up? (58) A. The books were handled much better after she came in.

Q. In other words, in these earlier years, when these other girls were keeping the books, there were many items of receipts that they failed to put on the books, that after she got the office straightened out, these items that had earlier been omitted began to be included? A. Very few items after she got in there that were excluded from income, or omitted, I should have said.

Q. In summary, Mr. Shrader, you found that for all of these years, from '45 through '49, that the receipts were reflected in the records in the office, and the trouble was that they weren't reflected on the figures on the returns? A. There is a large difference in those years through there from the total on the books and the amount as given to Mr. Menefee that got on the returns. It seemed to have got lost somewhere there.

Q. Well, at any rate they were on the books in the office, but they failed to show up on the returns? A. Well,

there was a lot that didn't get on the books, but there was a difference in each year in the amount that was on the books and the amount that got on the return.

Q. They were some place in the books, though, weren't they, Mr. Shrader, in the records? A. Well, I am talking about the cash receipts books from (59) which the returns were made up.

Q. The point I am trying to make is within those records, and we have got an office full of them out here—we have all of those records—these receipts were shown, and the trouble was that they weren't shown on the return? A. Yes. With the records there in the office it could be determined, which I did determine from the records in the office.

Mr. Claunch: You may ask him.

RE-DIRECT EXAMINATION by MR. URETZ.

Q. Mr. Shrader, now are you telling us that all of the records were available in the doctor's office from which you could compute his income for the years 1944 through '49? A. With the exception of the capital gains and losses, and annuities.

Q. And also isn't it true, Mr. Shrader, that the payments made by industries to the doctor, that is, industries whom he was doing medical examinations for, weren't some of those payments missing? A. They could not have been determined from the records there. We had to go out and contact those people.

Q. Then his records weren't complete? A. Yes, some of those items.

Mr. Claunch: I believe the only year that you (60) added that was 1945, in the amount of $916.50?

The Witness: There was only one year. There were several items making that up, but it did appear only in one year.

Mr. Claunch: That appeared only in one year?

The Witness: Yes; there were several items making up the $960.

By Mr. Uretz:

Q. Mr. Shrader, were there any records in the doctor's office with respect to his capital gain transactions? A. No, there were no records in there pertaining to that.

Q. How were you able to determine his capital gains for those years? A. I went to the court house and got the records there, the deed, the clerk's copy, and then I contacted these two real estate agents, Mr. Crabtree and Mr. Phillips, and there I obtained settlement copies on the larger part of the transactions. There were a few I did not.

Q. You have stated earlier, Mr. Shrader, that none of the doctor's capital gains were reported on any of the returns for any of the years involved.

The Court: No. He said they weren't as to real estate.

The Witness: There were some capital losses reported.

(61) By Mr. Uretz:

Q. I asked specifically about capital gains. Did the doctor report any capital gains during any of the years involved here? A. There were no capital gains reported.

Q. But he did report capital losses during some of the years, did he not? A. Yes.

Q. Now, the question has been raised about how you could be certain that you didn't duplicate in your computation payments which appeared on accounts receivable cards and payments which were shown by duplicate receipts. Did you check carefully to make certain that there was no duplication? A. We checked very carefully.

Q. How could you be certain—well, let me give you an example. Let's assume that a patient came into the office and was examined and paid the doctor or paid the receptionist a fee of $5. As I understand it, a receipt would be issued, is that correct? A. It would, if it were cash.

Q. All right. And then the duplicate receipt would remain in the office, and from that duplicate receipt the amount would be posted to the cash receipts ledger, is that (62) that normal procedure? A. Yes, that would be the normal procedure.

Q. Some of those, in fact a large number of those you have testified were omitted from the cash receipts ledger? A. Yes.

Q. Now, how could you be certain that they were omitted? A. Which one are you talking about there now, about two different items?

Q. I am talking about the cash receipt. I am talking about the duplicate receipts. A. Well, you could go back to your cash receipts ledger and check there. We normally checked about a week before and a week after. We checked over a rather large period there to see that they were not on the cash receipts ledger.

Q. I see. You took the duplicate receipt and cash receipts book for a week after and before the date, and if it didn't appear you could reasonably assume that it was not entered anywhere in the book? A. That is right.

Q. Was that true with respect to the accounts receivable credits which didn't appear on the receipts ledger? A. That is correct, and we did have to check between the two receivables to pick it up, the two sources there. There was a possibility that there was a duplication there, and we had to check very carefully between the two lists.

(63) Q. To make certain there was no duplication? A. That is right.

Mr. Claunch: Mr. Shrader, did you know Dr. Haskins before he was investigated?

The Witness: I don't think I had ever seen him before.

Mr. Claunch: Did you know his reputation?

The Court: That is part of the recross, Mr. Claunch. You have been through it. If you have anything to prove on that it should be brought up under different circumstances.

Mr. Claunch: That is all, Your Honor.

Mr. Uretz: That is all. You may step down.

The Court: All right. Thank you.

(Witness excused.)

Mr. Uretz: Your Honor, may I call my next witness?

The Court: You might as well get him in and get him sworn.

MRS. ELIZABETH GARRETT RIGSBY was called as a witness by and on behalf of the respondent, and, having been first duly sworn, was examined and testified as follows:

The Clerk: May we have your name, please?

The Witness: Elizabeth Garrett Rigsby.

(64) The Clerk: Thank you.

DIRECT EXAMINATION by MR. URETZ.

Q. Mrs. Rigsby, where do you reside? A. 3900 Montview Drive, Chattanooga, Tennessee.

Q. Were you at one time employed by Dr. John B. Haskins? A. Yes.

Q. During what period did you work for Dr. Haskins? A. It was either the latter part of 1933 or the first of '34. I don't remember exactly. It was until about May of '46.

Q. Until May of '46? A. '46.

Q. What were your duties with Dr. Haskins? A. Chiefly I was his assistant in the back, nursing and doing the X-ray work, lab work, and helping in the treatment room and emergency room, taking the histories of the patients, and getting the patients ready for the doctor, and of course I did some work on the books at times, when they didn't have anyone else there.

The Court: We will suspend at this time, Mr. Uretz. We will recess until 2:00 o'clock.

(Whereupon, at 12:30 o'clock p.m., a recess was taken until 2:00 o'clock p.m. of the same day.)

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(65) Afternoon Session.

(The hearing was resumed at 2:00 o'clock p.m., at the expiration of the recess.)

The Court: Proceed.

The Clerk: Mrs. Rigsby will you take the stand, please?

MRS. ELIZABETH GARRETT RIGSBY resumed the witness stand and was examined and testified further as follows:

DIRECT EXAMINATION by MR. URETZ (Resumed).

Q. Mrs. Rigsby, when we adjourned I had asked you what your duties were in the doctor's office, and I believe you stated that you assisted him in the preparation of patients and that you helped out with the bookkeeping, is that right? A. At times, when there was no one else there.

Q. Were you primarily responsible for the keeping of the books? A. No, sir.

Q. Who was during that period? A. Whoever might —there were a number of girls that worked up there. It is a long list.

Q. Mrs. Rigsby, will you try to keep your voice up so the reporter can hear you? (66) A. It was a long list. There were a number of girls that worked, and whoever was up there other than me would be on the books.

Q. When did you say that you left Dr. Haskins' employment? A. Around the middle of '46.

Q. Was Mrs. Bennett working for the doctor at that time? A. Yes, sir.

Q. What is her full name, if you recall? A. Catherine, I believe.

Q. Was she in charge of the doctor's books and records at that time? A. Well, I don't know that you would say she was in charge. She came in after school. She was a school teacher and she would come in after school, and Dr. Haskins' daughter was helping out, because I was sick at the time.

Q. I see. And was Mrs. Bennett primarily there to keep the doctor's books? A. Yes.

Q. That was what she came to the office for? A. Yes.

Q. Now, I want to direct your attention to the year—strike that. Would you describe that as well as you remember the doctor's office routine? What I want is for you (67) to tell me exactly how, when a patient came in,

what was done, was some card prepared, whether he carried it into the doctor, or how payments were made, and how those payments were entered on the books. You were sufficiently familiar with the bookkeeping system to do that, weren't you, Mrs. Rigsby? A. Yes, but after all this time I would hesitate to even give you a routine.

Q. Let me see if I can help you. Of course, I wasn't there, but I have an idea of what the office routine was. When a patient came in either you or the girl at the desk would make out a patient's history report, is that right? A. That's right.

Q. Just a card with the patient's name and address on? A. Yes.

Q. And then would the patient take that into the doctor? A. No, I would.

Q. You would take it into the doctor? A. Yes.

Q. The doctor would then enter the treatment on that card, is that correct? A. That's right.

Q. Then the card would go back to you? A. Yes.

Q. What would you do then? A. Well, as well as I remember the card was taken back (68) to the front desk.

Q. Now, when the patient came out of the doctor's examination room and approached your desk, what did you do? Did you advise him of what the charge was? A. If they asked.

Q. And if they asked, then you told them it was a certain figure, and they paid you that amount, you would issue a receipt? A. That is right.

Q. How would you know what to charge? A. Well, most of the time, if it was an unusual case, we would ask the doctor the charge. If it was just say a routine examination that he had a set charge for, why we would just charge that.

Q. And would you write the charge on the patient's history card? A. No.

Q. Where would you write that charge? A. Well, usually I guess it was put on the day book, I suppose. It has been so long—

Q. Well, you had accounts receivable cards, didn't you? I mean in addition to making out a patient's history card, you made out an accounts receivable card? A. We had a large book that the name of each patient was entered in this book.

(69) Q. Now, Mrs. Rigsby, directing your attention to the year 1944 and subsequent years that you worked for the doctor, did you ever help prepare work sheets which were to be furnished to Mr. Menefee with regard to Dr. Haskins' income tax returns? A. Yes, I have helped.

Q. Now, I hand you some work sheets with some figures—income tax return for the year 1944, and it appears to be work sheets showing the doctor's medical expenses, and farm expenses—he apparently had a farm. There are some farm expenses here, and there is also a record of his dividends. Did you prepare those two sheets (handing document to witness)? A. I certainly don't remember.

Q. You don't remember? A. Not after this length of time.

Q. Well, now, do you remember that work sheets were prepared by the office? A. Yes.

Q. Did you ever give these work sheets to Dr. Haskins? A. Yes.

Q. Was that what you usually did? A. Yes.

Q. You gave the work sheets to Dr. Haskins? A. Yes, sir.

(70) Q. And Dr. Haskins would then carry the work sheets to who? A. To Mr. Menefee.

Q. So that that was the usual procedure while you were in the office? A. Right.

Q. Do you ever remember taking the work sheets directly to Mr. Menefee? A. I never did.

Q. Do you recall ever totalling the cash receipts ledger? A. Not by myself. As I said, everybody that was up there worked on them at one time or another.

Q. Did you at any time that you worked for Dr. Haskins ever give the cash receipts total as taken from the cash receipts ledger to Mr. Menefee? A. No, sir.

Q. Now, Mr. Rigsby, here are the doctor's work sheets for the year 1945. Now they are of the same nature as the 1944 records. They are typewritten sheets showing—

The Court: What is the use of putting that in the record? If you want to ask her whether she prepared it, let her look at them.

By Mr. Uretz:

Q. Did you prepare that (showing document to witness)? (71) A. It is typewritten and none of that is in my writing.

Mr. Uretz: That is all. Thank you.

The Court: Just a minute.

Mr. Claunch: Will Your Honor indulge me just a second?

The Court: Yes, indeed.

Mr. Claunch: No cross-examination, Your Honor.

The Court: All right. Thank you, Mrs. Rigsby.

(Witness excused.)

Mr. Uretz: Mr. Claunch, is it all right if we release the witness to go home?

Mr. Claunch: Yes.

Mr. Uretz: Thank you very much, Mrs. Rigsby. Mr. Crabtree, please.

JOHN F. CRABTREE was called as a witness by and on behalf of the respondent, and, having been first duly sworn, was examined and testified as follows:

The Clerk: May we have your name, please?

The Witness: John F. Crabtree.

The Clerk: Thank you.

DIRECT EXAMINATION BY MR. URETZ.

Q. Mr. Crabtree, where do you reside? A. In Chattanooga.

(72) Q. What is your address? A. 504 Fortwood Place.

Q. And what is your occupation? A. I am in the real estate business.

Q. How long have you been in that business? A. Forty-three years.

Q. Did you have any real estate transactions or I should say handle any real estate transactions for Dr. John B. Haskins during the years 1941 through 1948? A. Yes, sir, I did.

Q. I asked you, Mr. Crabtree, to bring some records with you. Do you have those records, sir? A. Yes, I brought all the records that I could locate pertaining to any sales that I had in connection, over this period of years, with Dr. Haskins.

Q. You brought those records? A. Yes, sir.

Q. Now during these years, Mr. Crabtree, you handled a number of sales of real estate for Dr. Haskins, did you not? A. I sold property to him and property for him.

Q. All right, sir. Now, I am going to show you a list of property which was sold by Dr. Haskins and this is on page 10 of Exhibit L, and ask you to tell the Court which of those transactions were handled by you or your firm. A. The Chamberlain and Glass Street, we had no connection (73) with. That's the first on the list. 415 Georgia Avenue we did. 3204 Alta Vista Drive, we sold that. 606 R Street—that is in 1942—we handled that transaction. 400 and 404 Market Street, same year, we handled that transaction. 1943, 2250 Kirby Avenue, I am familiar with that deal.

Q. What do you mean, you are familiar with it? Did you handle it? A. We had a mortgage on it and I handled the transaction. Then it has the Commodore Apartment. We sold him that property in 1926 and resold it in 1943. 106 Cameron Hill, we sold that, and the Georgia farm, we sold him that. Now, in 1944, 413 Georgia Avenue, we handled that transaction. It has two others that I don't recall, 2704 East 46th Street and lots 15 and 16 East Side Park, we didn't handle them. In 1946 11th and King Street, we handled that. 1611-13 Read Avenue, we handled that. And in 1946, Market and 23rd Street, we handled that.

(74) Q. Now, when you completed ~~any~~ of these transactions, did you make up a settlement statement? A. Yes, sir, we did.

Q. And what did that settlement statement show? A. It showed either the purchase price or the selling price, and the details of the statement, how much cash, how many notes, and prorated the taxes and insurance, and the regular statement of sale.

Q. You listed the sales price or the purchase price and the expenses of the sale? A. Yes, sir, that is correct.

Q. Giving the net figure? A. Yes, sir.

Q. What did you do with these settlement statements? A. I delivered them to Dr. Haskins.

Q. Personally? A. Yes, sir.

Q. Did you put them in the mail? A. No, sir.

Q. Delivered them by hand? A. Yes, sir.

Q. Did you ever give them to Mr. Menefee? A. No, sir, I never did, not the statement of sale.

Q. Did you ever furnish Mr. Menefee with any information with respect to Dr. Haskins' real estate transactions? (75) A. We furnished Mr. Menefee each year with income, that is he would call up for the income, and we would tell our bookkeeper to get up the income each year and give it to him in the latter part of the year or the first of the new year, for income tax purposes, but personally I didn't do it. I simply instructed the bookkeeper to do it.

Q. Do you know of your own knowledge that the bookkeeper did call Mr. Menefee and give him the information? I presume the information was with regard to Dr. Haskins' rental income? A. Well, it wasn't specifically. They simply called up for income, and I would tell the girl to run off a statement, and I am sure that's all she figured. She never figured on the real estate transactions. I am sure she didn't give Mr. Menefee that. I just told her he would call up, and I just told her about the sales.

Q. You did not furnish Mr. Menefee with information with regard to the sales property? A. I never did discuss that with Mr. Menefee.

Mr. Uretz: That is all.

CROSS EXAMINATION BY MR. CLAUNCH.

Q. Mr. Crabtree, you have known Dr. Haskins for a great many years? A. Over 40 years.

(76) Q. Were you and he intimately acquainted? A. Yes, sir.

Q. During those years, '41 through '49, was he extremely busy? A. He was busy all the time.

Q. Was he a man of great energy? A. Yes, sir.

Q. When you had conferences with him during that time where would you ordinarily have those conferences? A. The doctor used to phone me all the time and either at night or in the day, and come by and pick me up in his car and I would go around on his calls and spend an hour with him. Usually that was the case.

Q. Was that the only time you could find him, if you would go with him? A. If you would go up to his office you would have to sit around so long that way that he tried to make it convenient on me, don't you see, and that's the way he handled it.

Q. How did he handle details? A. Well, I don't think he handled details at all, because—shall I elaborate on that?

Q. Yes.

The Court: Well, as to what you know. If you know anything about it, yes, but do not just speculate.

The Witness: All right, sir. I went to his office (77) at least once a year, with a basket, and take all his deeds and insurance policies and things like that, and take them to my office and keep them for a few weeks. I would try to straighten them up. I would index them and go back another year, and they would be in all sorts and kinds of shape. I did that regularly.

By Mr. Claunch:

Q. In other words, as to all the details regarding his purchase and sale of property, you handled it with the exception of the few that he handled through someone else? A. That's right.

Q. And insofar as the details of what to buy and what to sell, you would frequently call him up, and say, "Doctor, I think you ought to buy a piece of property. You could make some money on it," and he would buy it? A. Well, he always left that up to our judgment.

Q. Did he ever disagree with your ideas about the purchase and sale, or did he take your recommendations? A. I think Doctor had confidence in me. I think he had too much confidence in everybody. That's the way I look at it, things that he could buy other than real estate, but I never did have any trouble with Dr. Haskins on selling a piece of property that I thought was good enough to buy.

Q. Now, as I understand it, the arrangement was you handled some rental properties for him? (78) A. We collected some rents.

Q. And handled a great many, as you have stated here a number of the sales for him. A. Yes, sir.

Q. You knew that Mr. Menefee made up the return for him every year? A. I did.

Q. Was it the procedure regularly that whatever transactions there were that had anything to do with real estate, that your office would be advised to give that information directly to Mr. Menefee each year? A. Of course Dr. Haskins told me during the years that he didn't have to call me up. Mr. Menefee didn't have to call me up. The doctor had instructed me many years ago—I don't know how many years, but many years ago Doctor instructed me to furnish him with his income.

Q. He told you to give all that information about property that you handled to Mr. Menefee and he would make up the return? A. Yes, sir.

Q. Of course, as far as the doctor himself was concerned at that point he left? A. That is right.

Q. Now, Mr. Menefee regularly after that would contact your bookkeeper and get whatever information there was out of your office that he needed for the tax return, and he would (79) take it himself directly instead of though the doctor? A. Yes, it all came through our office.

Q. And that went directly to Mr. Menefee from your office? A. Yes. We never did report to Dr. Haskins at any time.

Mr. Claunch: I will have to ask Your Honor to excuse me for just a second.

The Court: All right.

By Mr. Claunch:

Q. Do you have some of the records on some of the calls on those properties, Mr. Crabtree? A. I tried to get everything pertaining to the statements, and where I didn't have the statements I checked with the references on the different properties, yes, sir.

Q. You have mentioned the first piece of property in 1941, 415 Georgia Avenue, that you handled that transaction. A. Yes, sir.

Q. What was the original cost or other basis of that property to Dr. Haskins? A. That property was purchased with another piece of property, 413 and 415 Georgia Avenue were purchased together, and I didn't locate my statement on that for 1941, but apparently, from my memory, the price of it they have got on there, the cost price and the selling price is correct on 415.

(80) Q. Those figures seem to be correct? A. Yes, sir.

Q. Now, as to 3204 Alta Vista Drive, which was in 1942, they have a cost basis of $6,584.69. What figure do you have? A. I have $7,150 plus back taxes. It was foreclosed in 1942. There was a first mortgage on there then. He had $2,150 second mortgage and some back taxes on it, and he had all that information.

The Court: Mr. Claunch, I thought all this was agreed upon as far as the tax itself was concerned.

Mr. Claunch: It is as to deficiencies, Your Honor. There is some question in my mind, however, as to whether or not there were any taxable gains in some of these years by reason of the change of some of these figures.

Mr. Uretz: That is not in issue, Your Honor.

The Court: Well, suppose there was not in some of the years. If what you are getting at would make a substantial difference, it is true it may reflect on the broad statement made by the agent, at least, that he never reported capital gains on the disposition of real estate in any year. Now you of course have a number of reasons or explanations as to why he didn't do it, but since you agreed upon the deficiencies, how much reflection would it be if this was $1,000 one way or the other, according to Mr. Crabtree's (81) records. If it is material I will give you time, but if it is not I do not see any use in playing around with details.

Mr. Claunch: I think Your Honor is exactly correct about that. My information was to the effect that there were some very substantial amounts.

The Court: Go ahead, then. Have you interviewed this witness previously?

Mr. Claunch: I have talked with him, yes, sir. Some of the information I only gathered today.

The Court: All right. Go ahead.

Mr. Claunch: I will make it as brief as possible, Your Honor.

By Mr. Claunch:

Q. Briefly, you have reviewed the agent's figures on these things. Do you have any figures that substantially are different as to the cost basis on any of these properties? A. Yes, sir, I have. Those that are correct there or near correct I won't mention.

Q. Just mention those where there is a substantial difference. A. 606 R Street, they have it down there $2,375.48 and it is $6,536.96.

Q. That was the cost? A. Yes, sir. On 2215 Kirby Avenue, you have $1,148.77 and it is (82) $4,255.

Q. $4,255? A. Yes, sir.

The Court: Mr. Uretz, we understand that as to this factor in the case at least this witness is Mr. Claunch's witness. It certainly is not cross examination. Go ahead.

The Witness: The Commodore Apartment, you have $14,882.61. We sold it to Dr. Haskins in 1926 at $28,500. I have title certificates for that amount in the title company.

By Mr. Claunch:

Q. Those are the only substantial differences? A. The only substantial differences, except Market and 23rd is $2,000. He paid $3,000 for it.

Q. Was that improved or unimproved? A. Improved.

Mr. Claunch: I believe that concludes it.

The Court: Mr. Crabtree, do I understand you to say that Mr. Menefee would call your office every year and you just gave him the lump sum to represent income from real estate?

The Witness: Yes, sir.

The Court: Never broke it down into individual properties?

The Witness: No, sir.

(83) The Court: Never referred to whether a piece of property was sold or not?

The Witness: No, sir.

The Court: Now, during this period of time Dr. Haskins bought property, too, didn't he?

The Witness: Yes, sir, he did.

The Court: Did Mr. Menefee ever ask the basis of that property for the purpose of such question as depreciation?

The Witness: No, sir.

The Court: Never mentioned that?

The Witness: Not as I recall.

The Court: Do you of your own personal knowledge have any information at all as to how Mr. Menefee got his figures as a basis for depreciation?

The Witness: No, sir, I don't.

The Court: All right. On the part of this testimony which was responsive to Mr. Claunch's questions, you may cross-examine.

Mr. Uretz: All right.

RE-DIRECT EXAMINATION BY MR. URETZ.

Q. Now, Mr. Crabtree, you mentioned I believe three pieces of property where you disagreed with the cost basis. A. My records indicate it different.

(84) Q. Well, the first one, I believe, was 606 Ore Street property. A. Yes.

Q. And what do your records indicate the cost or other basis was? A. 606 Ore Street, Dr. Haskins took a warranty deed from the owner and assumed the first mortgage amounting to $4,086.96 and cancelled a series of second mortgage notes of $2,500, making $6,500.

Q. As its original cost? A. Yes, sir.

Q. And that was acquired? A. 1931.

Q. 1931? A. Yes, sir.

Q. So in order to determine what Dr. Haskins' adjusted basis was in 1941, you would have to— A. I wouldn't know about that. I was talking about what he paid for it.

Q. Then you are not exactly disagreeing with what the agent determined here. The agent determined the adjusted basis as of 1941 or whenever the property was sold. A. I wouldn't know about that.

Q. Well, that's right, sir, but all you are stating then is what it cost him at the particular time the property (85) was bought, whether that was 1931 or 1926? A. That's right.

Q. And you are not disagreeing with the agent? A. I am not questioning the agent—

The Court: Aside from the question of agreement or disagreement it is a question of what the facts are. As I understand it, you never knew what depreciation was taken on these properties for tax purposes?

The Witness: No, sir.

The Court: And you never had any inquiries as to allocation between cost of land and cost of buildings?

The Witness: I don't think I ever had. I don't recall it. Of course, I looked after his property for—

The Court: The information you furnished has to do with cost at the time of the acquisition of the property?

The Witness: Yes, sir.

The Court: All right.

By Mr. Uretz:

Q. Now, Mr. Crabtree, did Dr. Haskins ever tell you to furnish any information with respect to his capital gains from the sale of real estate through you or your company to Mr. Menefee? A. Dr. Haskins never discussed profits or losses during the 40 years I knew him, on real estate. He never discussed that with me.

(86) Q. He never told you to report any capital gains he might have had to Mr. Menefee direct? A. Never mentioned it to me.

Mr. Uretz: That is all. Thank you.

(Witness excused.)

Mr. Uretz: Mr. Phillips.

E. Cecil Phillips was called as a witness by and on behalf of the respondent, and, having been first duly sworn, was examined and testified as follows:

The Clerk: May we have your name, please?

The Witness: E. Cecil Phillips.

The Clerk: Thank you.

Direct Examination by Mr. Uretz.

Q. Where do you reside, Mr. Phillips? A. Chattanooga, Tennessee.

Q. What is your address? A. Professional Building, Chattanooga, Tennessee.

Q. What is your occupation? A. Realtor, and insurance.

Q. How long have you been in that business? A. For myself about 25 years, and then I had about 8 years with C. B. Brown Brothers.

Q. Then did you handle any real estate transactions for (87) Dr. John B. Haskins during the years 1941 to 1948? A. Yes, sir.

Q. Mr. Phillips, I am going to show you a schedule of property which Dr. Haskins sold during those years, page 10 of Exhibit L, and ask you if you will point out which particular transactions were handled by you or some member of your firm? Just call off the property. A. This one, Chamberlain and Glass, was the first one. That's the only one on this list that we handled.

Q. There is only one real estate transaction on that list that you handled and that is the sale of the Chamberlain and Glass Streets property? A. That's right.

Q. Are you certain of that now, Mr. Phillips? A. Yes, sir. Now, we might have handled 413 Georgia but I am not sure about that one.

Q. How about that Calvert Street property? A. Just a minute. Calvert Street is not on here.

Mr. Claunch: It is not on here.

The Witness: Now, there is another one that we handled, too, 2215 Kirby Avenue. Calvert Street is not on here.

By Mr. Uretz:

Q. All right, Mr. Phillips. Now there were just two transactions that were handled by your firm? (88) A. Yes, sir.

Q. The sale of the Chamberlain and Glass Streets property and the sale of the property located at 2215 Kirby Avenue? A. Right.

Q. Now, after these transactions were completed did you make up a settlement statement? A. Yes, sir, we did.

Q. And what did you do with that settlement statement? A. We moved our office about five years ago from where our office was on 8th Street, up to the Professional Building. During that transaction some of our records were lost.

Q. Yes, sir. That isn't exactly my question. I will

restate it. Did you furnish Dr. Haskins with a copy of the settlement statement? A. That's right.

Q. And did you do it via the mail, or did you personally give him copies of the settlement statement? A. I could not say.

Q. But you did furnish Dr. Haskins with the settlement statements? A. Yes, sir.

Q. Did you ever give the settlement statements to Mr. Menefee? A. No, sir.

Q. Were you ever instructed to give any of the settlement (89) statements to Mr. Menefee? A. Well, Mr. Menefee would ask us once a year for rental statements and any income that the doctor might have on these transactions through our office, and of course I would turn that over to our bookkeeper and they would furnish Mr. Menefee with what they had.

Q. That is, your company was furnishing Mr. Menefee with the rental income that the doctor had, not with any capital gains?

Mr. Claunch: May it please the Court, I believe this is his witness. Your Honor, I don't think he should lead him to that extent.

The Court: Perhaps there have been too many questions from both sides starting out "In other words." If we have less summaries and permit the witnesses to testify to the facts we will get along better. I think you might rephrase your question, Mr. Uretz.

Mr. Uretz: Yes, sir.

By Mr. Uretz:

Q. Did your bookkeeper furnish Mr. Menefee with figures as to the doctor's capital gains from real estate transactions handled through your firm?

The Court: If you know.

By Mr. Uretz:

Q. If you know? (90) A. I could not say. I know that he furnished some information but I couldn't say about all of the information.

Q. Well, as a matter of fact, could you have furnished Mr. Menefee with that information? A. Well, our bookkeeping department could have furnished or was supposed to furnish them everything that we had.

Q. I don't want to argue with you. You are my witness. You didn't know what the taxpayer's adjusted basis on the property was? A. No, sir.

Mr. Claunch: Same objection, Your Honor.

The Court: It seems—

Mr. Uretz: All right.

The Court: Are you going to cross-examine him. There are two or three things I want to ask him, but I will wait until you are finished.

CROSS EXAMINATION BY MR. CLAUNCH.

Q. You know, of course, Mr. Phillips, that it was customary for Mr. Menefee to make Dr. Haskins' returns? A. Yes, sir.

Q. And whatever information Mr. Menefee asked for relative to real estate that would have anything to do with sales or rental or anything else, it was available for him at your office? (91) A. Yes, sir.

Q. And he frequently called your office and requested information relative to those things? A. Yes, sir.

Q. Did you know Dr. Haskins intimately? A. Yes, sir.

Q. How many years did you know him, Mr. Phillips? A. About around 30 years.

Q. Did you have occasion to be with him on frequent occasions? A. Yes.

Q. Was he a man who paid any attention to details, Mr. Phillips? A. No, sir.

Q. Was he the sort of man who, having assigned the responsibility to someone else, depended on that person to carry that out? A. Yes, sir.

Q. I believe you showed me a few days ago one of the customary manners in which transactions with him were handled, which was just a prescription slip with some figures on it? A. Yes, sir.

Q. Do you happen to have that with you? A. I do.

Q. May I see it? **(92)** A. Yes (handing document to counsel).

Q. State to the Court what that contains and what the occasion was that gave rise to that little memorandum. A. Your Honor, this was with reference to a sale that we made between Dr. Haskins and Mr. Kilp of the First Federal Savings and Loan Bank, and the sales price of the agreement was that he would assume a $20,000 loan and give property that he had, clear and free and unencumbered, and assume the paving taxes on it, and this is the notation that he made in his agreement on the sale.

Q. You didn't ask him for any sort of a formal written statement? A. No, sir.

Q. Why? A. Well, anything that Doctor would tell us, of course—I was awfully close to him—whatever he told me I would just take his word. His word was his bond.

Q. I believe you told me the other day as far as you were concerned that his word was his bond? A. That's right.

Mr. Claunch: If the Court please, we would like to offer that in evidence and ask that it be received and filed as an exhibit to the witness' testimony.

Mr. Uretz: I object, Your Honor. I think it is irrelevant and immaterial.

(93) The Court: Let me see it.

(The document was handed to the Court.)

The Court: What is your theory on its admissibility, Mr. Claunch?

Mr. Claunch: My theory, Your Honor, is that it goes to show the fact that this man was very busy, and that he took no time with details regardless of how large the transaction may have seemed to an ordinary individual.

The Court: And the basis of your objection, Mr. Uretz?

Mr. Uretz: The basis of my objection, Your Honor, it goes beyond the scope of cross-examination. I didn't raise—

The Court: It is perfectly apparent that these witnesses are not being cross-examined. They are being examined, and as to future witnesses, if you want that part of it deferred so that the witness is put on again, then you ought to object when the questions are asked. It is perfectly apparent that the questions asked this witness have been as a witness for the petitioner rather than cross-examination as a witness for the respondent. What does this piece of paper mean one way or another? I am going to accept it in evidence, but this piece of paper has not very much to do with my decision one way or the other; if it does I will be considerably surprised.

(94) The Clerk: Exhibit 1, admitted.

(Petitioners' Exhibit No. 1 was received in evidence.)

Mr. Claunch: That is all.

Mr. Uretz: That is all.

The Court: Mr. Phillips, did either Mr. Menefee or Dr. Haskins or anybody on behalf of Dr. Haskins ever ask you the cost of any property in relation to income taxes?

A. No, sir.

The Court: Did they ever ask you the selling price of any property?

The Witness: Well, Menefee at different times there would ask about property that the doctor sold, and of course the doctor was furnished with a statement on these properties.

The Court: What I am talking about, you said that Mr. Menefee asked questions about when the doctor's property was sold. What did Mr. Menefee ask?

The Witness: Well, he would just ask me anything that we had, if we had real estate sales, and we would turn that over to our bookkeeper and tell him to furnish Mr. Menefee with that, whatever he asked.

The Court: But he did ask you about sales?

The Witness: Yes, sir.

The Court: And did he ask you about purchases?

(95) The Witness: No, sir.

The Court: Did he ever ask you as to a piece of property how much of the cost should be attributed to land and how much to improvements on it?

The Witness: No, sir.

The Court: Did he ever talk to you about anything concerning depreciation?

The Witness: No, sir.

The Court: Did Dr. Haskins ever make any such requests of you?

The Witness: No, sir.

The Court: All right.

Mr. Claunch: That is all.

The Court: That is all, Mr. Phillips.

(Witness excused.)

Mr. Uretz: Your Honor, I have no further witnesses. May we go off the record for a moment, or have a recess for just a moment, Your Honor?

The Court: All right. We will take a short recess.

(Whereupon a short recess was taken.)

Mr. Claunch: May it please the Court, there will be a number of exhibits for this next witness, and with the Court's permission I would like to ask associate counsel to stand over there and hand these exhibits to him while I (96) pose the question. I think we would save a great deal of time.

The Court: All right.

Mr. Claunch: Mr. Menefee.

JOHN T. MENEFEE was called as a witness by and on behalf of the petitioner and, having been first duly sworn, was examined and testified as follows:

The Clerk: May we have your name, please?

The Witness: John T. Menefee, M-e-n-e-f-e-e.

The Clerk: Thank you.

DIRECT EXAMINATION BY MR. CLAUNCH.

Q. Mr. Menefee, will you please state your age? A Seventy years next.

Q. Do you live in Chattanooga? A. I do.

Q. How long have you lived there? A. Since 1919.

Q. During that time what has your occupation been? A. I came from Nashville to Chattanooga as division chief of the Internal Revenue Department.

Q. As what? A. Division Chief of the Internal Revenue Department, the income tax division.

(97) Q. What were your duties in the Internal Revenue Service? A. I had entire charge of the district, comprising Chattanooga and the surrounding territory.

Q. As an internal revenue agent? A. No, as a Deputy Collector of Internal Revenue, then Collector.

Q. How long were you in that service? A. You mean after I came to Chattanooga?

Q. The entire time? A. About four years.

Q. Since that time have you practiced as a certified public accountant? A. I have.

Q. In Chattanooga? A. Yes.

Q. And that began in what year? A. I left the Government service on December 15, 1921, and went into business for myself.

Q. As an independent certified public accountant? A. Yes, and then I received my certificate as a certified public accountant in the fall of 1923.

Q. Since that time have you had occasion to make a great many income tax returns? A. Yes, indeed, many of them.

(98) Q. Were you formerly on the Board of Accountancy of the State of Tennessee? A. I was.

Q. For how long? A. Three years.

Q. How long had you known Dr. John B. Haskins? A. For more than 30 years.

Q. Was he an outstanding and eminent man in his profession as a surgeon in Chattanooga? A. He was.

Q. Did he retain you to make his annual income and other Federal and state tax returns for him? A. He did.

Q. For how many years have you been doing that? A. I think, to be correct, about 31 years.

Q. So that you had made his returns for him back when you were an agent of the Government? A. That's where I first met Dr. Haskins. He came to the office and I prepared his return in the office there in Chattanooga. Then when I went in business, why he came to me.

Q. During all of that time you made his returns every year? A. I have.

Q. Was Dr. Haskins a very busy man? (99) A. Yes, to me he was a very busy man.

Q. Was he a man of great energy? A. Yes, very much.

Q. Did he retain you to, and did you, prepare, assemble and mail to the Collector of Internal Revenue at Nashville his Federal income tax returns for the calendar years 1941 to 1949, inclusive? A. I did.

Q. Were those returns, so far as you knew at that time, correct returns of his total taxable income for those years? A. I certainly thought so.

Q. Now you know, of course, that he has been accused by the Commissioner of having been guilty of fraud and intent to evade taxes for the years '41 to '48, inclusive. Did you know of any such wilful intent on his part when you made these returns? A. No, indeed; I never had any idea of anything wrong.

Q. Did you sign those returns yourself? A. I did.

Q. And verified it as far as you knew or were able to ascertain that they were correct returns of his income? A. I did.

Q. During those years did Dr. Haskins sign those returns upon your assurance to him that they correctly reported his taxable income and his taxes to the Federal Government? (100) A. He did. He come in my office.

Q. Did he examine those returns, Mr. Menefee, before he signed them? A. He did not.

Q. What? A. He did not. He never examined the returns at all.

Q. Did he know what those returns contained, what figures they contained insofar as professional receipts were

concerned? A. Not to my knowledge. He knew nothing about it, because he never asked to look at the reports.

Q. Did he know anything about what those returns contained as to capital gains and losses? A. No, sir.

Q. Did he know what they contained as to any other items? A. I don't think he did, because he never asked for the information nor looked at the returns after they were prepared.

Q. Did you confer with him regularly as to personal and financial matters? A. Well, I would say occasionally. Of course I didn't have too much in common with Dr. Haskins except taxes, that's all. He could refer to me on any taxation or anything of that nature.

(101) Q. Did he depend on you entirely to assemble his returns and to get the information for them? A. I think he did.

Q. Now, do you know to what extent he concerned himself with details? Did he have any conception of what his income or expenditures were, or how much money he had in the bank, or in property? A. Not to my knowledge. The only thing I could say with reference to that was that he just never examined the returns.

Q. Did he even write the checks for the taxes? A. No, sir. He would leave me a blank check and I would fill in the amount after the tax return was finished. Sometimes I would have him sign a blank return, because I had not prepared the return, and then I would call his office and tell his office how much the check was.

Q. Now, is it your customary procedure, Mr. Menefee, to keep in your files the papers that are furnished you by the clients giving you the information for the preparation of their income tax returns? A. Yes, sir-ee.

Q. And you kept these papers during all those years that you have been practicing? A. I have a copy of every tax return I prepared since I have been in business.

(102) Q. Do you keep your work papers and your script copy of the return? A. Altogether, yes.

Q. Did you keep all of those with reference to Dr. Haskins' income tax returns for the years '41 to '49? A. I did.

Q. Do you have those papers and are those the papers that you have furnished me in connection with your testimony? A. Yes, sir.

Q. Did you turn those over to the revenue agent early in this investigation? A. Yes, sir, I did turn them over every piece of paper I had.

Q. All your work papers and your script copies? A. That's right.

Q. Did they return all of them to you? A. No. There were some few that didn't come back.

Q. You mean you furnished all of them to them and let them take them with them and keep them in their possession? A. Yes, sir.

Q. And then when they were returned a few of them were missing? A. That is correct.

Q. Mr. Menefee, I hand you herewith Form 1040, United States individual income tax return for the calendar year (103) 1941, filled in with pencil with the name and address of Dr. John B. Haskins on it, and ask you if that is the script copy from your file of Dr. Haskins' 1941 Federal income tax return? A. It is.

Q. Is that your handwriting, and did you make up that return for Dr. Haskins? A. It is my handwriting and I prepared this return.

Mr. Claunch: We tender that in evidence, Your Honor, and ask that it be received and filed as an exhibit.

Mr. Uretz: I object, Your Honor. That is identical to the returns which have already been admitted into evidence. Respondent put in the identical returns. There is no difference between the photostatic copy that I put in and the copy from Mr. Menefee's files. It would just be cumulative.

Mr. Claunch: There is this difference, Your Honor. All of those papers are in Mr. Menefee's handwriting, and I would like very much to have them in evidence.

The Court: What do you mean, all the papers? Do you mean the work sheets and returns?

Mr. Claunch: Yes, Your Honor.

The Court: Well, Mr. Claunch, the witness has testi-

fied that he made out the return and testified that he made it out in his own handwriting. I can see the possibility that some of the work sheets, perhaps all of them, might (104) be material, but I don't see any good reason to put the return form in or any harm if it went in. I just do not see that it makes any difference one way or another.

Mr. Claunch: I won't insist on putting in the actual script copy of the returns. I would like very much to have his work papers, and I think they are quite material.

The Court: Assuming they are identified as indicated, I will admit the work papers then as exhibits. Of course, as far as the Court is concerned, it is just going to mean holding that much in the records of the Court, whether photostat copies are substituted or not. As I understand it, the witness testified that he got this information from Dr. Haskins by actual delivery. He has not indicated whether he has what Dr. Haskins turned over to him or not, or whether he just has his own notations. I can not visualize all of that until it is produced, but I see no reason to duplicate the return forms themselves.

I will permit him to testify as to each one if you ask him, that he made out the return in his own handwriting and I gather that Mr. Uretz will agree that the data and the figures on it are the same as the return already in evidence.

Mr. Claunch: I have no objection to those actual script copies of the returns not being in, Your Honor. I am principally interested in putting in the work papers, which I think are very material.

(105) The Court: Let's get to those, then, not to exclude you; as I say, if you have anything to show the preparation, although he has already said he prepared every one from '41 to '49, inclusive, and I believe he has indicated that he has been making them out since around 1923 or '24.

By Mr. Claunch:

Q. Mr. Menefee, from the return for 1941 what does it show the professional collections to have been that year?

The Court: Isn't that already in evidence?

Mr. Uretz: Yes, Your Honor.

The Court: By agreement the return form is in evidence.

Mr. Claunch: You filed all those exhibits?

Mr. Uretz: Yes, I filed those. They are all in evidence.

The Court: From '41 to '49.

By Mr. Claunch:

Q. The figures which you showed on the return which has been filed as an exhibit shows professional collections to be $10,347. Is that the figure without any change that was given to you by the bookkeeper or by Dr. Haskins? A. There has been no change at all.

Q. Where did you get those figures? A. Why, in most instances the figures were brought to my office by somebody from Dr. Haskins' office, and occasionally Dr. Haskins himself brought them down in an envelope and handed them to me.

(106) Q. How many years did each kind of transaction take place, do you remember, what years Dr. Haskins brought them there? A. That would be rather hard to say, just what years, because it was so seldom that he ever brought the figures. I wouldn't want to specify any particular year.

Q. On most occasions would he bring them or would they be given to you by the bookkeeper? A. They would be given to me by the bookkeeper in most instances. His daughter would bring them down to me sometimes.

Q. Did Dr. Haskins himself have any knowledge of what data or any of the other figures on his return for '41 were? A. I don't think he did, because he never mentioned the figures to me at all.

Q. I believe there are in the file there, Mr. Menefee, a group of seven sheets of paper with handwritten figures and memorandum on, and one typed sheet. I will ask you if those were your work papers from your file in connection with his return for the year '41? A. (Witness examines documents.) They are.

Mr. Claunch: We tender those in evidence, Your Honor, and ask that they be made an exhibit to this witness' testimony.

The Court: I would like to have the witness say (107) whether he prepared them or somebody else did. I do not know. It may be that some were prepared by him and some prepared by the bookkeeper, but I think we ought to have at least a general indication in the record of who prepared them.

Mr. Claunch: I agree, Your Honor.

By Mr. Claunch:

Q. Will you state to the Court how those were prepared, which ones were yours and which were prepared by someone else? A. Well, the two sheets I hold in my hand here came from Dr. Haskins' office, typewritten, with all the information on there, including his income; also including all the expenses and also the dividends, and in preparing the return the rest of the figures are all in my handwriting, and I copied from these figures to get my different schedules prepared to put them on the tax return.

Q. The two original sheets that you have there are the two sheets that were sent to you by Dr. Haskins' office? A. Yes, sir, and I have not added anything to the report outside of what was given to me, except depreciation. There is a depreciation schedule.

Mr. Claunch: We are tendering those in evidence, Your Honor.

The Court: Have you seen those, Mr. Uretz?

Mr. Uretz: I have seen the work sheets that Dr. Haskins furnished Mr. Menefee. I haven't seen these figures.

(108) The Court: As you look at each one, will you pass them over to me, please, at least for this one year?

Mr. Uretz: May I ask a question with regard to these exhibits, Your Honor?

The Court: You have a right to cross-examine before I pass on the question of admissibility.

Mr. Uretz: Are these figures merely the figures that you took from your work sheets?

The Witness: Yes, sir.

Mr. Uretz: Then, Your Honor, I think that this is merely cumulative evidence.

Mr. Claunch: It may be cumulative, Your Honor, but I think it ought to go into this record.

The Court: Well, why, Mr. Claunch?

Mr. Claunch: I want to show as thoroughly as I can the method of computation made by a certified public accountant in preparing this.

The Court: Mr. Uretz, it kind of makes the Tax Court a storage warehouse, but I don't see where it can be harmful, or at the moment helpful. I would rather save time here by letting them in. I would like to look at them.

(The documents were handed to the Court.)

The Court: These figures about John B., Jr., and Mary Fiske. Are they—

The Witness: They were his children. They had (109) separate dividends.

The Court: All right. I just wanted to understand. It has written on here "Dr. Haskins." Is that in his handwriting?

The Witness: No, that is my handwriting.

The Court: That is your handwriting?

The Witness: Everything in there is my handwriting.

The Court: All right. They will be received. Do you want them in a single exhibit?

Mr. Claunch: Yes, Your Honor.

Mr. Uretz: Your Honor, I don't want to unduly delay the trial, but are those records properly identified so that it will appear which are the work sheets of Dr. Haskins and which are the work sheets of Mr. Menefee?

The Court: Well, in the testimony it has been described as to the two types of sheets there, what he prepared and what he got from Dr. Haskins' office.

The Clerk: Exhibit 2.

(Petitioners' Exhibit No. 2 was received in evidence.)

The Court: Incidentally there should be no difficulty about identifying the handwriting for the number of years involved, the rest of it being identified as the witness' handwriting, so I do not think we will have any problem of segregation. Go ahead.

(110) By Mr. Claunch:

Q. Was Dr. Haskins' 1941 Federal income tax return audited by the revenue agent in charge of the Nashville division in 1943? A. It was.

Q. That was some seven years prior to the investigation that resulted in these proceedings? A. Yes, sir.

Q. Did he in that instance again leave the handling of that matter of the audit up to you? A. He did.

Q. Was any additional step or demand for tax made on him as the result of that 1943 audit? A. There was not.

Q. Now with reference to the year 1942, we hand you four typewritten sheets of paper that are pinned together, the first bearing the title "Income tax return for 1942," and ask you what those are if you know, and where you received them? A. (Witness examines documents.) On the typewritten information hereon, all of it was given to me by Dr. Haskins' office. The notations in pencil are my handwriting.

Mr. Claunch: We tender those in evidence. Your Honor, and ask that they be made an exhibit.

Mr. Uretz: No objection.

(111) The Court: Very well. It will be received.

The Clerk: Exhibit 3..

(Petitioners' Exhibit No. 3 was received in evidence.)

By Mr. Claunch:

Q. Those check marks on the papers were yours where you put the items on the returns, is that correct, in all instances? A. That is right, when I prepared the schedules.

Q. And that figure showing professional collections there of $18,840.27, is that the figure that you used as the total receipts for his practice as a physician and surgeon in making his return? A. It was.

Q. Is that the figure without any change that was given to you by Dr. Haskins' bookkeeper as being his total receipts for that year? A. There was no change and there never was any change of any figures in any of them.

Q. Now, there are four sheets there with pencil figures, memorandum on them. Are those your work sheets for the calendar year 1942? A. They are; they are my work sheets, work papers.

Mr. Claunch: We tender those in evidence, Your Honor.

Mr. Uretz: No objection.

(112) The Court: All right.

The Clerk: Exhibit 4.

(Petitioners' Exhibit No. 4 was received in evidence.)

By Mr. Claunch:

Q. Now, were these returns for each year prepared in the same manner and executed by Dr. Haskins under the same circumstances? A. They were.

Q. And what were those circumstances? A. Well, as in previous years I would get the information from his office and I would prepare the return. Sometimes I wouldn't get them before about the 12th of the month, of March, of each year, not of every year, however. Then I would call him and tell him that I wasn't going to be able to get the report out until maybe the 15th and he better come down and sign a blank report and give me a check.

Q. Did he have anything to do with the assembling of this information for the years? A. None that I know of whatsoever. For any other information I desired I always called the bookkeeper.

Q. Then after the return was signed, were the checks in each year signed in blank? A. Yes. I don't think there was a year that he ever made out one. He would give it to

me and I would fill it in (113) with whatever the amount was.

Q. Would he ask you questions about the return before he signed? A. No. Sometimes he would come in the office and he would pick up the phone and be talking over the phone and he would say, "Mr. Johnny, give me a pen," and he would sign a blank return.

Q. Now, in preparing the return for 1943 did you again get the sheets from his bookkeeper showing the gross receipts from his profession, the office expenses and other figures? A. I did.

Q. Now, in '43 there are not any work sheets in your file. Do you know what became of them? A. They were turned over to the revenue agent at the time of the examination.

Q. You gave them to Mr. Shrader? A. They were not returned to me—either Mr. Shrader or Mr. Dooley, I don't remember which one.

Q. They were both working on it? A. Yes.

Q. There are two small sheets in the file there with handwritten memorandum on them. I will ask you if those are some of your work papers for '43? A. Yes, sir, this is some of it, but I had to have the original figures to get these figures.

(114) Q. Was it necessary for you to have had other information other than what is in those work papers there in order to have made up the return? A. I most certainly would have, because I wouldn't be able to figure out something down here and put a lot of figures down when I didn't know where they came from.

Q. Now, the 1944 return, was it made again under the same circumstances? A. It was.

Q. Did he again come to your office and sign the return without examining it, in 1944? A. Yes, sir.

The Court: Mr. Claunch, this witness has said that he didn't remember which years the doctor came that way and which he didn't.

Mr. Claunch: I believe, Your Honor, he said that he didn't remember each instance where the bookkeeper

brought the information down, but I believe, sir, his testimony was as to the signing of the return.

The Court: All right. Perhaps you are right. Go ahead.

The Witness: The doctor every year came to my office to sign the return, a blank return, and left a check.

By Mr. Claunch:

Q. Now, I hand you two typewritten sheets headed "Income (115) tax return for 1944 for Dr. Haskins," and ask you if those are the information sheets that were furnished you by his bookkeeper for preparing the 1944 return? A. They are.

Mr. Claunch: We tender those in evidence, Your Honor.

Mr. Uretz: No objection.

The Court: Very well.

The Clerk: No. 5.

(Petitioners' Exhibit No. 5 was received in evidence.)

By Mr. Claunch:

Q. Referring to the two sheets that have just been received as an exhibit to your testimony, there are some pencil notations on that particular year, and on that first sheet is a pencil notation "Receipts, $19,289.67." Is that in your handwriting? A. It is.

Q. Will you explain what that is, and how that happens to be there in your handwriting? A. Well, after I received these papers from the office I discovered there were no receipts shown on the papers, total professional income from Dr. Haskins' office, and right at the bottom of that, midway down on the same sheet you see I have Mrs. Rigsby's telephone number, and I called Mrs. Rigsby and that's where I got this information, $19,289.67.

(116) Q. Did you discuss that figure with Dr. Haskins or have any contact with him at all about it? A. I did not.

Q. I hand you sheets from your file on the letterhead of Dr. Haskins and ask you what they are and where you

received them? A. In the same manner that I received the others from his office.

Q. Now at the top of the first page there is a handwritten figure of $20,390.27. A. That is correct.

Q. Is that your handwriting, and if so, what does that figure represent? Where did you get it? A. That is my handwriting, and it was obtained in the same manner in which I obtained the others, over the telephone, when there was no professional receipts listed on the information that was furnished.

Q. Who gave you that figure? A. For that year I have no memorandum here who gave it to me.

Q. I mean was it Dr. Haskins or one of the girls? A. Absolutely not Dr. Haskins he never gave me a figure. I never asked him for a figure.

Q. Did you discuss those gross receipt figures with Dr. Haskins? (117) A. Never. Never had discussed them with him at all.

Q. And he again executed it in the same manner he had in prior years? A. Yes, sir, the same way.

Q. Now, in the 1946 file there are four sheets of paper—

Mr. Claunch: I beg your pardon. I tender that in evidence.

Mr. Uretz: No objection.

The Court: All right.

The Clerk: Exhibit 6.

(Petitioners' Exhibit No. 6 was received in evidence.)

By Mr. Claunch:

Q. From the 1946 file I show you four sheets of paper containing some typewritten and pencil notations, and ask you to identify those. Tell me if that first one has a pencil notation in your handwriting showing gross receipts? A. It has.

Q. The second sheet is on a letterhead. Does that show a list of all the expenses? A. Yes, that is the expenses itemized.

Q. Now, that figure in your handwriting, what is the amount of that? A. It is $28,890—

Q. Are those the gross receipts that were given you by (118) the girl in his office? A. Yes, for 1946.

Q. How did you get that figure? A. The same as I had received the others, over the telephone from the office, and not Dr. Haskins.

Q. Was he contacted in any way before you used that figure? A. No, sir, he was not.

Q. Please refer to the 1947 file—

Mr. Claunch: I want to file that as an exhibit.

Mr. Uretz: No objection.

The Clerk: Exhibit 7.

(Petitioners' Exhibit No. 7 was received in evidence.)

By Mr. Claunch:

Q. In the '47 file there are five sheets of paper containing pencil and pen notations and figures. Can you identify those? A. The first four sheets is information furnished me by Dr. Haskins' office. This fifth sheet (indicating) is all in my handwriting, and there are also memorandum made on one of the sheets in my handwriting.

Mr. Claunch: I offer those in evidence, Your Honor.

Mr. Uretz: No objection.

(119) The Clerk: Exhibit 8.

(Petitioners' Exhibit No. 8 was received in evidence.)

Mr. Claunch: If Your Honor please, I have notes on a great deal of stuff I prepared. I am not really as slow as it seems.

The Court: All right. Go ahead.

By Mr. Claunch:

Q. In the '48 file there are a group of sheets of paper. I will ask you to identify those (handing documents to witness). Briefly, are they the work papers furnished you by Dr. Haskins' bookkeeper for that year? A. They are

Mr. Claunch: We tender those in evidence, Your Honor.

Mr. Uretz: No objection.

The Clerk: Exhibit 9.

(Petitioners' Exhibit No. 9 was received in evidence.)

By Mr. Claunch:

Q. Please state, Mr. Menefee, if in all of the subsequent years that I haven't asked you about the returns were prepared by you in the same manner and executed by the taxpayers or the taxpayer in the manner that you have heretofore described, without examination on their part? **(120)** A. They were.

Q. And were the blank checks again left as they had been in prior years? A. Each year they were left.

Q. Now the allegation has been made by respondent that during some of the years in question Dr. Haskins derived capital gains from the sale of real estate, and that he failed to report them. Can you make any explanation as to those, and what, if anything, Dr. Haskins had to do with the omissions in those returns? A. Well, each year I would call John Crabtree's office and also Cecil Phillips' office, because both of them handled rents and sales for him, and I would ask them to give me the entire income for each year on all income that he had received, including sales, and they would give me the rent and said that was all.

Q. You asked them for sales? A. I dealt with the bookkeeper exclusively.

Q. You were not dealing with Mr. Crabtree or Mr. Phillips individually? A. No, sir.

Q. Did you ask them for the sales? A. I asked them, yes.

Q. Was that responsibility a matter that had been assigned to you by Dr. Haskins in making up his return? **(121)** A. Well, yes. He asked me to call and get the information on that because he had no record of any rents or things in his office, and then they would give me the

total rent, break it down into the different expenses, such as the insurance, taxes, repairs or whatever the items that the company handled.

Q. Was it your responsibility to get the rental income and the sales income? A. It was my responsibility to ask for it, and I did ask for it, but I only got the rents.

Q. Out of these figures that Dr. Haskins himself personally brought to you, were in any instances the professional receipts included on those sheets? A. They were included. I think most of them were included.

Q. They were written on the typewriter or in handwriting? A. Typewritten. There was never anything given to me in handwriting. It was all on the typewriter.

Q. All of those that are in handwriting were given to you on the telephone? A. Given to me on the phone is correct. There was my handwriting on those papers.

Q. Those in typewriting were prepared in his office? A. Yes, sir.

(122) Mr. Claunch: You may ask him.

CROSS EXAMINATION by MR. URETZ.

Q. Mr. Menefee, did you ever examine Dr. Haskins' books or records? A. No, sir.

Q. Now you stated that the work sheets which you were furnished were either brought to you by someone in Dr. Haskins' office or by Dr. Haskins, you don't remember which in any particular year? A. That's right. I don't remember any particular year.

Q. Mr. Menefee, do you know a Mr. Charles W. Dooley? A. Yes, I met Mr. Dooley.

Q. Who is Mr. Dooley? A. Mr. Dooley was a revenue agent. I don't know whether he is now or not.

Q. Mr. Dooley was a special agent? A. Yes, he was, and also Mr. Shrader.

Q. Do you recall an interview you had with Mr. Dooley sometime during August of 1950? A. I don't know what date—I had several interviews with both of them.

Q. Do you recall a particular interview you had with him when you told him that—and I am quoting—"It has (123) been a custom for the taxpayer to furnish me with the figures which appear on his income tax return. This information is usually mailed to me or brought over to my office by Dr. Haskins, although it is possible that his daughter, Mary Fiske Haskins King; may have brought this information in some years." Is that a correct statement? A. Yes, that is a correct statement.

Q. Then it was either Dr. Haskins or his daughter who brought you the work sheets? A. No, sir, there had been others brought them to me.

Q. I again ask you if that is a correct statement, what I just read to you? A. Well, it is correct, but he might have misquoted me.

Q. Well, you may say if that is not a correct statement. A. Which one is this?

Q. I have underlined it, sir. A. (Witness examines document.) No, I don't think that is correct, because Dr. Haskins or Mary Fiske and others have brought me information.

Q. Who were the others? A. I couldn't tell you that. The only name I knew up there was Mrs.—the lady that I called that was there for awhile. I had her name on that paper there. I had it on (124) that '44 paper, as I recall it, but I can't think of her name.

Q. We will pass that. A. I know others brought me the papers.

Q. Now, when they brought you the work papers either Dr. Haskins or Mary Fiske Haskins or somebody from Dr. Haskins' office, those typewritten sheets didn't have the gross receipts figures, did they? A. Most of the times they did have the gross receipts figure.

Q. Well, this gross receipts figure was never typed in, was it? A. Sure it was typed in. If you will look at those records you will see them. Sure, most of them were typed in.

Q. All right, you show me. A. Most of them were typed in.

Mr. Uretz: They were typed in—he has pointed out to me that they were typed in for 1941, '42 and '43.

By Mr. Uretz:

Q. Now, let's take a look at the work sheet for 1944? When that was given to you it didn't have typed in the gross receipts figures per books, did it? A. No, sir.

Q. You wrote it in later? That is your handwriting? A. Yes, that is my handwriting.

Q. And how did you get that information? **(125)** A. I got it from Mrs. Rigsby. Here is the telephone number where I called.

Q. Well, now, Mr. Menefee, there was only one phone in Dr. Haskins' office, wasn't there? A. This was not at her office. This was at her home that I called.

Q. Now, are you certain that you spoke to Mrs. Rigsby? A. I am positive I did, or I would not have had the telephone number down here.

Q. Well, you might have—I don't wish to argue with you, but you might have had the telephone number for any other reason? You had heard Mrs. Rigsby's testimony, did you not? A. Yes, sir.

Q. And you heard her state that it was the custom in the office to turn the work papers over to Dr. Haskins, who would then give them to you? You heard that, didn't you? A. I heard that, yes, sir, but my testimony is what I just stated.

Q. Yes, sir. Now, for 1945 the same thing is true, that is, the typewritten work sheets were furnished you, but these work sheets did not have on them the gross receipts figure? A. That is correct.

Q. And you would telephone sometime after you got these work sheets, you would telephone to the doctor's office and **(126)** somebody there other than Dr. Haskins would give you the gross receipts? A. Yes, sir, other than Dr. Haskins. I never asked him for any receipts.

Q. And that is true for 1946? A. It is true for every year.

Q. True for every year except '41, '42 and '43? A. Well, those are right on the paper there.

Q. Yes. Do you have any idea why the gross receipts figure would be left off the work sheets? A. I haven't the slightest idea.

Q. I will ask you another question. You are aware, Mr. Menefee, aren't you, that there the gross receipts—that there was a large discrepancy between what the gross receipts were per the doctor's books and what the figure given to you was? A. Yes.

Q. Have you any idea why that would be so? A. I haven't the slightest idea why.

Q. Do you have any idea why any of the girls might want to do that? A. I have not.

Q. Now, with respect to Doctor's capital gains, did you ever ask the doctor if he had any capital gains during these years? **(127)** A. No, sir.

Q. Well, how did you, assuming it was your job, of course, to prepare his returns, how did you expect to determine what the doctor's capital gains were during these years? A. I was to contact Mr. Crabtree's office and Mr. Phillips' office, and get all income, rents and sales.

Q. Well, now, did you—you have been an accountant for a long time. If you call a real estate agent in connection with respect to the capital gains of a particular client for whom they have sold a piece of property, do you expect to get it? A. No. They can give me the information, if they had any, but they told me they didn't have any. All they gave me was the rents.

Q. You specifically asked them if the doctor had any sales, and they told you he made no sales? A. Yes, sir, they told me that.

Q. Did you ever call Dr. Haskins when you were in the process of preparing these returns and ask him if he had any capital gains? A. No, sir.

Q. Now, Mr. Menefee, you in the earlier years of this case represented Dr. Haskins, did you not? A. I did.

(128) Q. At various conferences, and right up to this time? A. That is right.

Mr. Uretz: Just a moment, Your Honor please.

By Mr. Uretz:

Q. Mr. Menefee, did you furnish Dr. Haskins with copies of his income tax returns for each year? A. No, I mostly kept them in my files.

Q. Well, what is your usual custom? Don't you prepare one file copy for yourself and a copy for the taxpayer, and the original? A. I usually do, but some of my clients want me to keep them, keep their copies.

Q. Did you keep Dr. Haskins' copies? A. I think I did. I think I turned them over to the revenue agent. I don't think he ever took a copy.

Mr. Uretz: That is all.

The Court: Any redirect?

Mr. Claunch: No questions.

The Court: Thank you, Mr. Menefee.

(Witness excused.)

REBECCA B. HASKINS was called as a witness by and on behalf of the petitioners, and, having been first duly sworn, was examined and testified as follows:

The Clerk: May we have your name, please?

(129) The Witness: Rebecca B. Haskins.

The Clerk: Thank you.

DIRECT EXAMINATION by MR. CLAUNCH.

Q. What is your present address, Mrs. Haskins? A. 405 Sterling Avenue, Chattanooga, Tennessee.

Q. When were you and Dr. Haskins married? A. 1948.

Q. Prior to that time had you taught school? A. Yes, for 25 years.

Q. You are a graduate of Maryville College? A. And post-graduate work at the University of Tennessee.

Q. How long had you known Dr. Haskins prior to your marriage? A. Practically all my life. I had known Dr. Haskins and his family because of having been born and reared in the same community in Tennessee.

Q. Had you been a patient of his for sometime, too? A. Yes, since 1933, and up until the time of our marriage, I was a patient, during which time Dr. Haskins performed on me three major operations. There was also an illness during that time which extended for a period of six months and during that six months period it was necessary for me to be hospitalized a portion of the time and the remainder of the time it was very necessary that I see him constantly in (130) his office.

Q. Had you known Dr. Haskins' first wife and his children? A. Yes. I not only knew her, but I knew her family, too, because she likewise was born and reared in the same community which I was.

Q. When did she die? A. 1940.

Q. How many children were there and are they now living? A. Three. There were two daughters and one son. The two daughters are still living.

Q. What was the son's name? A. John B. Haskins, Jr.

Q. When did he die? A. 1944.

Q. Do you know the cause of death? A. Yes, he died of an incurable disease, called endocarditis. He was a medical student in Baltimore at the time of his death, at the time of the illness. He had to come home, I think early in—late in '42. He had to leave medical school and come home because of this incurable disease, from which he was suffering, about which nothing had been known.

The Court: Mr. Claunch, why do we have to go into this?

(131) Mr. Claunch: She was going a little bit farther than I expected.

The Court: All right.

By Mr. Claunch:

Q. Did you have occasion to be in Dr. Haskins' office on a number of occasions prior to your marriage to him in 1948? A. Yes, because I was his patient from 1933 up until 1948.

Q. Subsequent to your marriage did you assist him in the office? And if so, in what manner? A. Yes, I went into his office in February of '51, and remained in that capacity until his death, as his secretary and bookkeeper.

Q. During that time, and also while you were a patient there did you have occasion to look into procedures in the office with reference to the bookkeeping and keeping of records? A. Well, during the time I was a patient I discerned from being in the reception room that he was very, very busy, even though he had four treatment rooms, the X-ray room, laboratory room, and the various reception rooms. The office was generally crowded and many times it was necessary for patients to be seated in the hallway.

Q. Do you know approximately how many patients he saw (132) a day? A. Well, I have no direct knowing at that particular time, but I would say certainly from 75 to 100 seemed the number that was there when I was there as a patient.

Q. Well, did you observe the bookkeeping procedure? A. At the time that I was a patient of course I did not discern the bookkeeping, did not investigate the bookkeeping or discern anything in particular about it. I did know that the office was in a state of confusion, somewhat due to the possibility of the overcrowded condition. I don't think it would have been possible for them to have done the work that was there to be done. The doctor was a person who could do what two or three men could ordinarily do in the same period of time, and I think he expected his help in his office to work as rapidly as he did.

Q. Did he himself know anything about bookkeeping? A. No. He knew nothing about bookkeeping. He knew nothing about his books. He didn't know how to use a

typewriter, adding machine. He didn't even know the combination to his safe.

Q. Did he ever concern himself with details of that kind? A. No; he did not. He was too busy with waiting on his patients.

Q. Did you have a hand in getting Mrs. O'Neil in the (133) office, the lady that has been testified about in the latter part of these years involved? A. Yes, I did, because as a patient I had noticed that there was a spirit of confusion and atmosphere of unpleasantness or distress or something about the office, and Mrs. O'Neil had been a student of mine in high school, a very conscientious, loyal and honest person. Knowing that Doctor needed some help in his office I suggested to him that I knew of a person whom I thought would be of great help to him in getting his office straightened out.

Q. Did the situation there improve after you had obtained the services of Mrs. O'Neil? A. Very definitely it did, because she was very conscientious. As she expressed it, worked with Doctor and not for Doctor, and I think that was responsible for the fact that things did straighten out considerably.

Q. Have you personally checked the books from '47 and after Mrs. O'Neil took them over, and also the books before that time? A. Yes. Very recently I have checked the entire records and books for 1947.

Q. You did that in my office this last week? A. I did. I found when I checked the records that the incorrect —or rather the receipts which were not transferred from the duplicate receipt book to the cash book took (134) place, for the major part, prior to August 1, when Mrs. O'Neil took over the bookkeeping. There were just three small errors after August 1 to the end of the year. May I say this? I also looked into the records of 1945 and '46, not completely, but enough to see that what was existing in '47 had also existed in '45 and '46, in that duplicate cash receipts were not transferred into the cash book.

Q. Did you find frequent occasions there where somebody doing the bookkeeping had simply failed to enter

any of the receipts for several days in the cash book? A. Yes. One particular time in 1947 there were four days completely left out, that is, not transferred from the duplicate receipts to the cash book. Those four days happened to be the last four days of the month. Also during that year, the first seven months of that year, I might say, there was almost practically one day each week omitted from the cash receipts being transferred to the cash book.

Q. Did Dr. Haskins ever indicate to you that he knew what was going on? A. He did not.

Q. To what extent was he familiar with the details of other business matters that he had outside his office? A. Not any, because he had a job to do and he did that, (135) and he depended on other people to carry on the other businesses for him. After I became his secretary and bookkeeper, for example, I received very soon after I was in the office a check of dividends from the Life and Casualty Life Insurance Company. I noted on that check that we were being paid dividends for 550 shares of stock. I immediately questioned that, because I was the only one who had access to the safe, and I knew that we did not have in our possession those stock certificates that corresponded to that 550 shares of stock.

I immediately then began to look for them and could not find them, could find no one that knew anything about them. Doctor did not know how much stock he owned in the Life and Casualty Company, so I contacted the company, and asked them how much stock he owned. They verified the fact that he did own that many shares of stock and it was not until a year later that I discovered—that I found those stock certificates.

Q. Where were they? A. I found them back in the storage room on the top shelf, as near the ceiling as they could be placed, filed in the midst of some cancelled 1937 checks.

Q. That was 550 shares of Life and Casualty stock? A. Correct.

Q. Did Dr. Haskins have any idea about that when you discovered them? (136) A. He didn't know he had

them, because when I went to him and asked him about the stock he didn't know how much he had. He didn't know anything about it.

Q. Do you remember the circumstances of the execution or signing of your 1948 and '49 income tax returns, that is, where it took place and under what conditions? A. Doctor and I went to Mr. Menefee's office after he had called up and told us that he was ready for us to come down. We had to bring three checks with us, so Doctor took three blank checks. We went in his office, signed the return, and the doctor signed the checks and we left. We went on our way making calls.

Q. It has been noted here that for those years they did not include the amounts from annuities. Can you explain that? A. Yes. Prior to, I believe it was, 1943 an insurance agent in Chattanooga from whom Doctor bought many annuities, told me and Dr. Haskins that annuities were not taxable.

Q. Do you know the procedure that he employed with reference to house calls, as to the recording of those? A. Each morning when he came into the office he reported the house calls that he had made since the office hours the day before, also reporting those that had paid cash and those that had not.

Q. Did he make any entries on his books? **(137)** A. No, he never wrote a receipt at all. If he happened to be left in the office alone, for example, during lunch hour and patients came in, he noted the patients he had seen and the ones that had paid him cash, and left it on a scratch pad on my desk.

Q. Did you ever find any entries of his on any of his books? A. No. In my examining the books last week of 1945, '6 and '7, I found in no cases figures, or even his initial, on any of the receipts.

Q. Did he have any training or understanding of bookkeeping? A. None whatsoever. Doctor thought entirely scientifically and of his profession, and he knew nothing about books.

Q. What about signing checks? A. Well, his book-

keeper always wrote his checks. He was very interested and insistent that all his bills be paid the first of each month, and if his secretary or bookkeeper had not written the checks by the tenth of the month he was always questioning why weren't the checks written. All he did was sign those checks. He would never even look at the checks or the amounts of the checks.

In looking through the records last week, I found a check that he had given; no name filled in at all. In (138) other words, "Pay to the order of" blank. I looked on the back of that check and found that it had been endorsed by the Freeman Pontiac Company. I knew quite well that he had been in the Freeman Pontiac Company and gone by the cashier and said, "How much do I owe you? Give me a blank check," because it was not on his office check. He had signed his name and filled in the amount, and said, "You fill in the other." They had not done it. The check had been paid.

Q. Did you observe any laxity or inattention to financial details in other respects? Did he pay any attention to details of any of these items? A. No, the doctor never paid any attention to any details in any way, to any routine or detail work.

Q. Who made the bank deposits? A. I made the bank deposits. I even prepared the deposits for taking them down. In the time I was there I made the bank deposits; maybe in a very few instances he might have made deposits, but generally speaking he left it to his secretary to make deposits. He never prepared them. He never opened his mail, and checks or money that came into his office by mail he never saw.

Q. You say on some occasions he made the deposits. Who prepared those deposits? Did he prepare any of the deposits? A. To my knowledge—

(139) The Court: We have been over that.

By Mr. Claunch:

Q. Did you have occasion to go with him yourself on calls? A. Yes, I went with him in the last three or four—

well, the last five years. I definitely was with him on practically all the calls he made, and prior to that time I also was with him on calls, because it was after he performed the last operation on me that he and I became somewhat interested in each other, other than in a professional way, and in order for me to be with him it was necessary that I go with him on his calls, or else we never got to see each other.

Q. What time of the morning did he usually start to work? A. When I was a patient in the hospital many times he came to see me between 5 and 6 o'clock in the morning, because he would probably be going to Athens to perform some surgery. He would go there and perform that in order to get back to his office by 10:30, his office hours. He was supposed to be in his office at 11—I mean at 10, but he occasionally did not make it until 10:30 when he had these out-of-town operations to perform.

Q. What time did he usually get through at night? A. Well, I should say he never got through before 8:30 (140) or 9 o'clock, and then frequently after we were home he was called out again. The doctor was a person who never failed to go, whether or not they lived in the darkest alley, or what the need was; whether the person had money or didn't have money, he always went. That was one of the reasons—

The Court: I think that question has been rather fully answered. Let's go on with the next one. You are volunteering too much, Mrs. Haskins.

The Witness: All right, sir.

Mr. Claunch: You may ask her.

CROSS EXAMINATION BY MR. URETZ.

Q. Mrs. Haskins, did you work in the doctor's office at any time during the years '41 through 1949? A. Yes; after we were married in '48 I assisted some there, and then just—in the year '48 we were married. The two girls working in the office at that time were my students and

when one of them was going on a vacation they asked Doctor if I couldn't come in the office and be at the telephone, so I did assist in the office in the fall or summer of '48, but after we were married I was in there on week ends to relieve the girls.

Q. And you were married in December of '48? A. Yes.

Q. December 31? (141) A. Yes, sir.

Q. Have you any knowledge of how many patients the doctor would see per day during the taxable years in question? A. Not exact. It was just an estimate. As I would say, as a patient I saw his office always full, and it would merely have been supposition on my part in those earlier years as to how many were actually there. Of course, I was with Doctor a great deal and what I knew was what he told me.

Q. You made a statement that while you were working for the Doctor he saw 70 to 100 patients a day? A. No, not while I was working for him. I said while I was a patient I would estimate that there were from 75 to 100 patients. He was not seeing that many while I was working for him.

Q. His practice had declined after the war years? A. It had declined, yes.

Q. Would it be a fair statement to say that Dr. Haskins' practice, as a result of many young doctors going in the war service, increased tremendously during the war years and then slacked off as the young doctors came back from the service? A. Well, it increased, but I wouldn't say it increased too much, because doctor had had—well, this is—

Q. Well, that is enough, thank you.

Mr. Uretz: We have nothing further of the witness.

(142) The Court: Mrs. Haskins, during the period when you were working in the office what did the doctor charge for ordinary office visits?

The Witness: At the time of his death he was charging two and three dollars for office calls, $4 for a house

call. He never charged more than that, and in the years in the mid-forties, many of his calls, his office calls, were even cheaper than that. Now, a $2 call was made to widows and retired men. He never charged them over $2 till the year of his death.

The Court: And those were his charges when he was seeing roughly about 75 people a day?

The Witness: Yes, sir.

The Court: All right. Thank you.

Mr. Uretz: May I ask one question?

By Mr. Uretz:

Q. What was the doctor's specialty? A. Surgery.

Q. Did he do any surgery? A. Oh, yes.

Q. And do you have any idea of what the schedule of his rates was for such operations? A. Yes. The Hamilton County Medical Society has a fee book which lists for every operation minimum and maximum charges. Doctor's charges were always minimum.

(143) Q. How many operations did he perform every week on an average? A. I couldn't answer that question, because of course his surgery—now, when I was in the office, his surgery had dropped off completely. I mean not completely, but a great deal to what it was, because he was up in years then, and so I couldn't tell you exactly what his number of operations were prior to the time I was in the office.

Mr. Uretz: That's all. Thank you.

The Court: All right. You are excused.

(Witness excused.)

Mr. Claunch: Mr. Harber.

H. KEITH HARBER was called as a witness by and on behalf of the petitioners, and, having been first duly sworn, was examined and testified as follows:

The Clerk: May we have your name, please?

The Witness: H. Keith Harber.

DIRECT EXAMINATION BY MR. CLAUNCH.

Q. What is your occupation, Mr. Harber? A. I am an attorney in Chattanooga, Tennessee.

Q. Are you the executor of the estate of Dr. John B. Haskins? A. Yes, sir.

(144) Q. Do you have certified copies of the letters testamentary in the will? A. Yes, sir.

Mr. Claunch: If the Court please, we would like to tender those in evidence as an exhibit.

Mr. Uretz: I have no objection. I don't see the relevancy.

The Court: Well, he might as well qualify as a party, Mr. Uretz.

The Clerk: Exhibit 10.

(Petitioners' Exhibit No. 10 was received in evidence.)

By Mr. Claunch:

Q. When did you begin the practice of law in Chattanooga? A. July, 1949.

Q. Do you recall the investigation of Dr. Haskins' returns involved in this case, when it was begun? A. Yes, sir.

Q. When? A. Mid-1950.

Q. Did you counsel with Dr. Haskins in connection with this matter? A. Yes, sir.

Q. Did you have numerous conferences with Mr. Shrader (145) in connection with it? A. Yes, sir, but my connection with Mr. Shrader was rather late after the investigation was about completed, or rather after it had been completed, before I first met him.

Q. You also had numerous conferences with Mr. John Crabtree? A. Yes.

Q. How long had you known Dr. Haskins? A. I never knew him until I came to Chattanooga, although I was a grand-nephew of his and had heard of him all my life, but I didn't know the man intimately until I came to Chattanooga.

Q. Did you familiarize yourself with the bookkeeping and accounting procedure that was employed in his office? A. Only after the investigation was completed by the internal revenue agent.

Q. Did you know anything about the extent to which he did or did not participate in those bookkeeping procedures? A. I know from my investigation, which was extensive, that I found no indication that he had participated at all in his bookkeeping activities, banking activities, rental or real estate purchases or sales.

Q. Mr. Harber, you knew him personally. Did he ever give any indication of taking any interest in details of that (146) sort? A. No, sir.

Q. Do you know how long he had lived in Chattanooga? A. Yes, sir, he had lived there since 1911.

Q. And he was a resident of Chattanooga during these years? A. Yes, sir.

Q. Did you have any personal knowledge as to the extent of his practice, the nature of it? A. Well, I think the investigating that I did in conjunction with Mr. Menefee following the investigation by the Internal Revenue Department indicated that—I know we checked several days that seemed to be typical, and I recall that on one particular day he saw as many as 150 patients. It was so fantastic as to be nearly beyond belief unless you could see those records. Beside the terrific practice that he had, he of course was engaged in seeing people at home and operations, et cetera.

Q. Was a considerable portion of his practice charity? A. He had a terrific collection experience. By that, I mean it was extremely low. I recall after I knew him personally many times he didn't attempt to charge people by reason of knowing they couldn't afford to pay.

Q. As to these years 1946, '47, '48 and '49, which are still open under the statute, did Dr. Haskins pay those taxes (147) and the interest thereon?

The Court: Why do we have to go into that? I mean, is there any question about it? It has been mentioned in

connection with the opening statements. There is no issue about the amount.

Mr. Claunch: All right, Your Honor.

By Mr. Claunch:

Q. Did you for a period of time live in Dr. Haskins' home? A. Yes.

Q. When was that? A. During 1950 and '51.

Q. How old was Dr. Haskins in 1941, the first year under consideration? A. He was 60 years of age. He was born in 1881.

Q. When did he die and what was the cause of death? A. He died May 5, 1953, from arteriosclerosis and cerebral thrombosis.

Q. Was he actively engaged right up to the time of his death? A. Yes, sir.

Q. At that time he was approximately 72? A. Yes, sir.

Q. Were you in the office frequently when this investigation was conducted? **(148)** A. No, sir.

Q. Did you know whether or not the records were all turned over to the agent, the internal revenue agent? A. Yes, I know they were. I know that there was—

The Court: Mr. Claunch, it has not been questioned at all, I believe.

Mr. Claunch: This is purely cumulative, Your Honor.

By Mr. Claunch:

Q. Did you and Dr. Haskins make a search for these books in '41, '42 and '43? A. Yes, sir.

Q. Were you able to find them? A. No, sir.

Q. Do you have any idea what happened to them? A. No, sir, we didn't. We couldn't determine where they were or what happened.

Mr. Claunch: That is all.

Mr. Uretz: No questions.

The Court: Thank you, Mr. Harber.

(Witness excused.)

Mr. Claunch: Your Honor, if you will give us just a moment, I think we can cut down on some of our testimony.

The Court: All right.

(Short pause.)

The Court: How many more witnesses do you have, (149) Mr. Claunch?

Mr. Claunch: Your Honor, we have two other witnesses, possibly three that are on the way here from Chattanooga. They should have been here before now. One of them is a lady, Mrs. O'Neil, the bookkeeper. Everyone seems to be interested in her testimony. She has two very small children and was supposed to be here at about 4 o'clock.

The Court: Besides the three that are not here, how many are there that are here?

Mr. Claunch: I believe this is the last witness that we have here.

The Court: Let's have someone posted to bring in the others as promptly as possible.

C. A. CLEMENTS was called as a witness by and on behalf of the petitioners, and, having been first duly sworn, was examined and testified as follows:

The Clerk: May we have your name, please, sir?
The Witness: C. A. Clements.
The Clerk: How do you spell it?
The Witness: C-l-e-m-e-n-t-s.

DIRECT EXAMINATION BY MR. GAMMON.

Q. You are Dr. Clements, and you are a practicing physician in Chattanooga? (150) A. Yes, sir.

Q. How long have you been practicing medicine, Dr. Clements? A. Since 1937.

Q. Did you at one time have a connection with Dr. Haskins? A. Yes, sir.

Q. When did you form that connection? A. I am not positive whether it was '45 or early '46. It was after I came out of the Army.

Q. During the time that you had this connection with Dr. Haskins did you have an opportunity to observe the number of patients that came into his office, as to whether there were many or few, or anything of that sort? A. Yes, sir.

Q. What was your connection? Was it an associate or partner or what? A. It wasn't a partner. I was on a salary. He was my employer.

Q. During that time that you were associated with him, did he have many or few patients come to his office? A. Well, we would usually see from 70 to 100 patients a day.

Q. Was that seven days a week? A. No, sir. We would see not as many on Sunday.

(151) Q. But your testimony is that for six days of the week it would be that high a number? A. Yes, sir.

Q. And how long were you connected with him and when did you cease your connection with him? A. Approximately six months.

Q. During that period of time did your services make Dr. Haskins owe you some money for your work that you did with him? A. Yes, sir; he paid me $250 a month.

Q. Now, did he give you a check for it—did he write out a check for it, or how were you paid? Just tell the details of how you received your payment. A. I was paid out of the office.

Q. Would Dr. Haskins write the check? A. I don't recall ever seeing him write a check, no, sir.

Q. How would you get your check? Did you have to ask for it or did someone deliver it to you? A. The girls would just hand it to me.

Q. At one time do you recall an instance where you told Dr. Haskins that you needed some money and he turned you over to the secretary with instructions to get a check from his secretary? A. I don't recall any unusual instance.

(152) Q. Do you recall that you needed some extra funds at one time and you asked Dr. Haskins to make an advance to you for some special purpose?

The Court: Mr. Gammon, after two questions which have been as leading as these two, if the witness does not remember, I don't think he is going to.

Mr. Gammon: May it please Your Honor, I have this doctor mixed up with another doctor, so I withdraw that question.

The Court: Very well.

By Mr. Gammon:

Q. Did you have occasion to determine how many hours a day Dr. Haskins would work while you were associated with him? A. Yes, sir. We would start—well, I would usually contact him around 8 in the morning, and we left the office anywhere from 5 to 7, and after that why we had calls to make and hospital rounds to make. I think from 8 until 9, or until 11 a lot of times, a lot of days.

Q. Would that be an unusual or a typical day? A. No, sir, we worked that way quite constantly.

Q. During the time that you were with him? A. Yes, sir.

Q. Doctor, did you have occasion to find out about Dr. Haskins' professional reputation in Chattanooga while you were associated with him?

(153) The Court: Does anybody question his professional reputation? It has been gone over again and again.

Mr. Gammon: Only the Government, may it please Your Honor.

Mr. Uretz: We don't question the doctor's professional reputation.

The Court: I have not heard them question it. You are talking about his professional reputation. Witness after witness has told of the amount of practice, the number of patients. That he was outstanding I do not believe is questioned. This is the first doctor. If you ask him one

question about it, let him answer it, but it certainly has not been questioned.

Mr. Gammon: That is all, may it please the Court.

Mr. Uretz: No questions.

The Court: All right.

(Witness excused.)

Mr. Claunch: Your Honor, if I may, I would like to ask the Court's attitude toward character witnesses.

The Court: I have not any attitude on anything until it becomes an issue.

Mr. Claunch: I have at least one character witness here that I would like to use.

The Court: It depends a great deal upon what you ask him and what he answers. I can't pass on it in advance. **(154)** There is a fraud alleged here.

Mr. Claunch: Mr. Keese.

We find considerable authority, Your Honor, to the effect that the personal character and reputation of the taxpayer are pertinent. I had that in mind.

The Court: You certainly proved most of them. Now if you want to prove his general reputation or such characteristics, if there is no objection to it, I will be glad to hear you.

Mr. Claunch: I might mention another thing, that having brought this witness 120 miles I hate to send him back without testifying.

The Court: That is a very persuasive argument.

W. S. KEESE was called as a witness by and on behalf of the petitioners, and, having been first duly sworn, was examined and testified as follows:

The Clerk: May we have your name, please?

The Witness: W. S. Keese.

The Court: How do you spell it?

The Witness: K-e-e-s-e.

DIRECT EXAMINATION BY MR. CLAUNCH.

Q. Dr. Keese, you are not a medical doctor, are you? A. I do the best I can to hear you. My hearing isn't (155) good.

The Court: It is understood that he is not. That is all right.

By Mr. Claunch:

Q. You are a doctor of divinity?

The Court: You are a doctor of divinity?

The Witness: Yes, sir.

The Court: All right. Go ahead.

By Mr. Claunch:

Q. How old are you, Dr. Keese? A. 82.

Q. Where do you live? A. Chattanooga.

Q. How long have you lived in Chattanooga? A. Forty-odd years.

Q. By this time are you retired? A. Yes, sir.

Q. What did you do prior to retirement, Dr. Keese? A. The last 20 years prior to my retirement I was head of Bonny Oaks Industrial School.

Q. What did you do before that? A. I was a minister and pastor there in the city.

Q. At the Highland Park Baptist Church? A. Yes, sir.

Q. How long were you pastor there? (156) A. Fourteen and one-half years.

Q. Dr. Keese, were you intimately acquainted with Dr. John B. Haskins? A. Rather, yes, sir.

Q. How long did you know him? A. I think we came to Chattanooga about the same time and became acquainted—forty-odd years.

Q. Some forty-odd years? A. Yes, sir.

Q. Was he a member of your congregation? A. He was.

Q. Was he active in the work of the church there? A. He taught a Sunday school class in church for a number of years.

Q. Do you know anything as to what his standing was in the community, and if so, tell the Court? A. Well, so far as I know his standing was excellent. I never knew anything to the contrary.

Q. Did you find him honest and upright in his dealings with you and with other people? A. Absolutely, without question, yes, sir.

Q. Did you ever have occasion to discuss the philosophies of life with him? A. Well, yes, rather. We were always sympathetic in our views.

(157) The Court: Just a minute. Now, his reputation, yes; his honesty, yes, but why his philosophy of life coming through another witness, Mr. Claunch?

Mr. Claunch: I will withdraw the question, Your Honor.

The Court: All right.

By Mr. Claunch:

Q. Did you ever have any occasion to know of his cheating or attempting to defraud anyone? A. No, sir.

The Court: He said his reputation was of the highest and he was honest and fair in his dealings. Now, if there are a half a dozen more ways you want to say it, all right, we will accept it.

Mr. Claunch: That is all, Your Honor.

Mr. Uretz: No questions, Your Honor.

The Court: That is all. Thank you very much, Doctor

(Witness excused.)

Mr. Claunch: Your Honor, that other witness is here, but I would like to have a conference with her.

The Court: How long is that going to take?

Mr. Claunch: Fifteen minutes.

The Court: Well, Mr. Claunch, you are asking that we recess until tomorrow morning?

(158) Mr. Claunch: Yes, sir. I didn't have quite the nerve to ask that.

The Court: Very well. we will recess until 9:30 tomorrow morning.

For the benefit of counsel in the succeeding case, how long is this going to take tomorrow?

Mr. Claunch: It shouldn't take over one hour.

Mr. Uretz: Your Honor, possibly my cross-examination may be lengthy. I don't know. It depends on what they testify to. I would say an hour to three hours, Your Honor.

The Court: All right. 9:30 tomorrow morning.

(Whereupon, at 4:45 o'clock p. m., an adjournment was taken until 9:30 o'clock a. m., Thursday, May 12, 1955.)

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(161) The Clerk: We will proceed with Dockets 53505 and 53506, Estate of John B. Haskins.

Mr. Claunch: Miss Bennett.

KATHARINE LEE BENNETT was called as a witness by and on behalf of the petitioners, and, having been first duly sworn, was examined and testified as follows:

The Clerk: May we have your name, please?

The Witness: Katharine Lee Bennett.

The Clerk: Thank you.

DIRECT EXAMINATION BY MR. CLAUNCH.

Q. Miss Bennett, where do you live? A. 518 Pine Street, Chattanooga, Tennessee.

Q. How long have you lived there? A. At this particular address, about four years. However, I have been in Chattanooga for the past 11 years.

Q. You sound like you were born in Tennessee. Were you? A. Yes, Decatur, Tennessee.

Q. What do you do now, Miss Bennett? A. I am teacher of 11th and 12th grade English in the Cookman Vocational High School, Chattanooga.

Q. Did you formerly work for Dr. John B. Haskins in (162) Chattanooga? A. I helped him, yes.

Q. When did you first start working in his office, Miss Bennett? A. Well, I was a patient of Dr. Haskins in the fall of 1943. Dr. Haskins asked me to come in on Saturdays, as I was a patient on Saturday, in the fall, and make surgical supplies. I continued to do that on Saturdays, and then the office force was so busy and the telephone was ringing incessantly that they asked me to answer the telephone and I did.

Q. How long did you stay in that office? A. I left there in the summer of 1947.

Q. So you were there from the fall of '43 until the middle of '47? A. That's right.

Q. Did you later on start doing some of the bookkeeping? A. Yes. I assumed more and more responsibility. The girls were unable to do the work, the heavy work that was required in that particular office.

Q. Well, did you do all of the bookkeeping or not? A. I helped with it, yes.

Q. Who else helped on it? A. Well, Mrs. Rigsby and then Miss Mildred Beetle was there, from 1943 to '44, and then Mrs. Rigsby, as she could, **(163)** would work. However, her principal duties were in the back, assisting the doctor.

Q. Did you have quite a few girls in the office? A. Yes, quite many.

Q. That was during the war? A. Yes, that was during the war, and the wives of the servicemen would come in. However, they would stay only just a very short time. Some of them were high school girls.

Q. Did you have any bookkeeping training? A. No, I did not.

Q. Had you had any experience as a bookkeeper? A. No, I did not.

Q. Was part of the responsibility of keeping the books upon you? A. It certainly was.

Q. Was the office very busy at that time, with Dr. Haskins, Mrs. Rigsby and the others? A. It was too busy for words; it really was. I helped with the books. I helped to make out the records. I was an experienced typist. I

took typing down at the Cookman Vocational School at nights, and I typed the letters that he dictated to me.

Q. Did you have a lot of dictation to do, a lot of insurance reports? A. Yes, there was.

(164) Q. Which had to come first, the books or those reports and waiting on patients? A. Well, seeing the patients who came in each day demanded our attention and the reports and the letters, answering the telephone.

Q. What about the books? Were they kept up to date? A. No, they were not. They were far, far behind.

Q. Do you have any idea how far behind they usually were? I mean the posting of the receipts to the cash book and the posting of other items, and the keeping of the books in general. Did you keep up with it from day to day? A. No; no, indeed. We just had to let that go and we caught up with them as we could, and of course I was a teacher and went in after school hours and week-ends, and during my summer I did catch up with the books. They were five or six, possibly seven months behind sometimes.

Q. Did Dr. Haskins know that you were that far behind? A. No.

Q. Did he ever ask you to get the books up, or whether or not the books were in shape? A. Yes, he cautioned us to keep the books up.

Q. When he would ask you if the books were in shape, what would you tell him? A. We would tell him they were up.

Q. You mean you would tell him they were up even though (165) they were five or six months behind? A. We certainly did.

Q. Why would you do that?

Mr. Uretz: Objection, Your Honor. This witness hasn't said that the books were five or six months behind.

The Court: I think she did, Mr. Uretz.

Mr. Claunch: Yes, she did.

By Mr. Claunch:

Q. Why would you tell him that the books were up to date when they were that far behind? A. Well, it just

wouldn't have done to have told him differently, because Dr. Haskins expected the work to have been done. When he assigned you a duty to do, he expected you to do it, and he didn't follow up, and I know that he would have exploded all over the place if we had told him that we hadn't carried through.

Q. Do you remember who made up the tax forms, Miss Bennett, who prepared his income tax returns? Do you remember who it was? A. Well, I helped to do that.

Q. You didn't actually make up the returns yourself? A. No, no.

Q. You prepared the information? A. I prepared the information.

Q. Do you remember who you gave the information to? **(166)** A. Mr. Menefee. He was the C. P. A.

Q. Now, what would you work up first to give Mr. Menefee in the way of the information? A. Well, we kept the expense more nearly up to date. That was one of the first duties that the doctor assigned to me, for me to do. I failed to mention that a few minutes ago.

Q. Keep up the expenses? A. Yes.

Q. You kept those pretty well up to date? A. Yes, they were.

Q. Well, did you make up a sheet of expense figures and send them to Mr. Menefee? A. I remember one time having done that, yes, sir.

Q. Do you remember ever having any telephone conversations with Mr. Menefee about the income tax information? A. Several times, yes.

Q. Would he call you and ask you what the gross receipts were, and all? A. Yes.

Q. Do you remember having a conversation with him about that? A. Yes, I do.

Q. Would you give him the gross receipts figure over the telephone? **(167)** A. Yes, I did.

Q. Now, you were there from the fall of '43 until the summer of '47, is that correct? A. Yes, sir.

Q. So that there were two or three years that you

were there when the income tax return was made up in March? A. Yes, I was there. I was helping.

Q. Of course, you don't remember what those figures were that you gave him on the telephone? You said that you remembered that you gave him the gross receipts? A. Yes. Goodness knows, I don't recall.

Q. When you gave him that figure of the gross receipts, do you know how you arrived at it? A. I got it from the books. We had a cash book.

Q. Didn't you say that the books were often five or six months behind? A. Yes, sir. We were far behind.

Q. Well, how would you be able to give him the figures if the books were behind? A. Well, I just went to the book and I got my figure.

Q. You don't remember how? A. No, I do not.

Q. Did you have monthly totals in the book? A. Not at that time we didn't. We just hadn't had time to put it in there.

(168) Q. Well, you have seen some of these books since then, and you know that they show monthly totals, isn't that right? A. Yes, I did that in the summertime. As I said, I taught school and I had very little time to spend in the office, and I did all the work, and it was just catch it as I could, on the books, and during the summer after I finished my work I had a few weeks that I spent working on the books, and I brought them up to date then.

Q. You mean that you gave Mr. Menefee a figure when it wasn't complete? A. Yes, sir.

Q. Why did you do that? A. Well, I had to. He just kept calling for the number, the total number, and I had to.

Q. How did you get that figure? A. I don't remember now. I got it from the books.

Q. Did Dr. Haskins know anything about that? A. No, he did not.

Q. You didn't discuss it with him? A. No, sir, I did not.

Q. Did that happen each of these years that you were there? A. I don't recall the other years, but I do the

1946. That was March of 1947, the last year that I was there.

Q. Do you remember giving the figures to Mr. Menefee (169) the figures that year on the phone, but you don't remember, of course, what the figures were? A. That's right.

Q. Do you remember having given him the figure on one or two other occasions? A. Yes, I did.

Mr. Claunch: You may cross examine.

CROSS EXAMINATION BY MR. URETZ.

Q. Miss Bennett, you were familiar with the doctor's office routine during these years? A. Well, I can't say that I was—I did the best I could. Mrs. Rigsby was there and she did—

The Court: Miss Bennett, that was not the question. You were asked whether you knew the office routine. Now just answer the question, and we will get along quickly, if you know the office routine as to how the patients came in and how appointments were made.

The Witness: Yes, the best I remember—

The Court: Your answer is yes. Go ahead.

By Mr. Uretz:

Q. How would you describe the office routine and tell us just how you kept the doctor's books during the period you worked for him. A. Well, as I say, I had very little time to work on (170) the books. It was possibly just a few minutes that I could work on them. Sometimes they had to go for a length of time.

The Court: You have explained that, Miss Bennett. Now what happened when a patient came in, new or old, about making entries on the books? You fully explained your problem, and we understand it. Now we want to know what happened.

The Witness: Thank you. When the patient came in we got the name of the patient and made out a history card for him. That was our duty. And after the doctor

saw the patient and he was leaving, he came by the desk and we made the charge as to what the doctor did, and if the patient paid we made a receipt and gave the patient the receipt, and of course we had our duplicate receipt book.

The Court: Suppose he didn't pay, the patient didn't pay, what did you do?

The Witness: We made the charge in the ledger.

The Court: You had the accounts receivable card, didn't you?

The Witness: Yes.

The Court: Did you make a charge on that?

The Witness: We made a charge on that, yes.

The Court: All right. Go ahead.

The Witness: And then if the patient didn't pay then and came in and paid later, or sent it in later, then we (171) credited it back to his account.

By Mr. Uretz:

Q. Now, when did you post from your duplicate receipts and from your accounts receivable, and from the checks that you got in the mail? A. Just as we could. Many times that was far behind.

Q. Did you total the cash receipts books at any time while you were there? A. In the summertime.

Q. Did you realize that many of the receipts hadn't been posted? A. At that time I did the best that I could.

Q. I didn't ask you that. I asked you did you realize that many of the receipts hadn't been posted? A. No, I did not realize it.

Q. Now, I believe you stated at the end of the year the work sheets were prepared to give to Mr. Menefee, is that correct? A. They may not have been prepared at the end of the year, but sheets were prepared, were handed to him sometime in March.

Q. I hand you now the 1944 work sheets that were prepared for Mr. Menefee. Did you type those work sheets (handing document to witness)? A. No, I did not type that in '44.

(172) Q. You didn't type that in '44? A. No, I did not.

Q. Did you give Mr. Menefee a gross receipts, do you remember, for the year 1944? A. I gave him a figure of an income over the telephone. He kept calling and asking for it, but I did not give him this.

Q. All right. That was 1944. Are you sure that in 1944 Mr. Menefee telephoned you and you gave him a gross income figure? A. I was in there two or three of those years prior to 1947.

Q. But that isn't the question I asked you. I am referring you specifically to 1944. Do you remember Mr. Menefee calling you in 1944 for the gross receipts figure, and do you remember giving him that figure? A. No, I don't remember giving him that figure for that year.

Q. Now, you stated that you didn't prepare the work sheets. Do you know who did prepare the work sheets in 1944? A. No, I do not.

Q. Do you know if these work sheets were given to the doctor? A. Prior to 1946 I don't know.

(173) Q. Then did you prepare the work sheets for 1945? A. I helped with a good many of the sheets, but I do not recall. Let me see it.

Q. I hand you the 1945 work sheets and asked you if you prepared those (handing document to witness)? A. I was there. This is my writing here (indicating).

Q. That is your writing there on the bottom of the page? A. This is my writing.

Q. All right. Tell me, Miss Bennett, why didn't you have the gross receipts figure typed in here on these work sheets? A. They weren't prepared. It wasn't ready.

Q. Who did you give these work sheets to? A. This one year I gave it to—the work sheet—to Mary Fiske Haskins.

Q. In 1945? A. No, it was in '46.

Q. I am asking you about '45. A. That I don't recall.

Q. Did you give them to Dr. Haskins? A. I never did

give them to him, any material. Mrs. Rigsby was there at that time.

Q. Did you total the gross receipts book in 1945? A. I do not recall. I worked on the books.

(174) Q. Did you give the gross receipts figure, the total, to Mr. Menefee, in 1945? A. I know prior to the 1946 I gave him the total receipts over the telephone.

Q. I am asking you specifically about the year 1945. Did Mr. Menefee call you and asked you for the gross receipts figure? A. He did not call me in particular. He kept calling the office, and as I say, I answered the telephone.

Q. All right. But you gave Mr. Menefee the gross receipts figure which is in Mr. Menefee's handwriting on this work sheet? A. Well, I gave him some figures.

Q. No, ma'am, I didn't ask you that. I am referring specifically to the gross receipts figure here, this figure (indicating). A. Let's see. Which one is it?

Mr. Claunch: If the Court please, I believe she said she gave him the figure several years, she didn't remember which ones. I think she answered that question.

The Court: This is cross examination, Mr. Claunch. I think Mr. Uretz has a right to pursue it.

By Mr. Uretz:

Q. This is the figure right here (indicating). This is Mr. Menefee's handwriting; he has so testified. This is (175) the gross receipts figure that somebody gave Mr. Menefee. Now I am asking you if you know who gave him that figure? A. No, I do not, except that I did give some two or three times over the telephone, and I wouldn't swear that it was this particular year.

Q. Could you swear as to any particular year? A. In 1946 I did, and some of the years before.

Q. Well, you testified that you didn't in 1944. You don't remember? A. I don't remember having done it.

Q. And you don't think you gave it to him in 1945? A. I may have. I gave him several figures over the telephone, but as far as that I don't recall.

Q. Now, I hand you the work sheets which were given to Mr. Menefee in the year 1946. Did you prepare those, Miss Bennett (handing documents to witness)? A. I am sure I did.

Q. And who did you give those work sheets to? A. This was the year that Dr. Haskins—in 1947, in March,—Dr. Haskins was going out of town and I could not get down to give it to Mr. Menefee and I asked Mary Fiske, his daughter, to take them down to him.

Q. And she took the work sheets to Mr. Menefee? A. I am sure she did.

Q. Why didn't you have typed in the gross receipts (176) figure for that year? A. I didn't have it at that time.

Q. You didn't have it completely posted? A. No. I did not.

Q. All right. Somebody did call in the gross receipts figure to Mr. Menefee for the year 1946? A. Yes.

Q. Was it you? A. Yes.

Q. And the figure that you gave Mr. Menefee was $28,809, is that correct? A. I don't recall what the number was then.

Q. Well, that is the figure that Mr. Menefee put down in his work papers, $28,000. Now, Miss Bennett, the totals on the cash receipts books for the year 1946 were $35,405.87. The figure that was given to Mr. Menefee was $28,809. Had you completed posting your books when Mr. Menefee telephoned you for the figure? A. I don't know—I did not have a total.

Q. Where did you get the figure to give him? A. I got it from the books.

Q. Could you show me how you could have gotten the figures from the books, when it wasn't completed? A. I don't recall now how I got it, but I did get my figure from the books.

(177) Q. Did you tell Mr. Menefee that that wasn't the complete figure? A. Well, at the time I didn't have it. Mr. Menefee kept calling back and calling back, and this

particular time he said he had to have it, and I thought that I had to give him a figure.

Q. So you just picked the figure out of the hat, is that right? A. No, I didn't pick it out of the hat. I got it from the books.

Q. Miss Bennett, would you have any interest in understating the doctor's income? A. None whatsoever.

The Court: Then, Miss Bennett, why did you turn over figures when you knew they were not correct?

The Witness: Well, I had to give him a figure. He was pressing for it, and I had some of the posting done, and I got it from what I did have in the book.

The Court: Well, if your opportunities to post were as limited as you say, why didn't you speak to Dr. Haskins about it and get the proper help?

The Witness: Well, he did try to get help along, and the help would come in for a little while, and they would seem to be so inefficient or—

The Court: But you didn't ask him for help on the (178) books, did you?

The Witness: I don't recall now.

The Court: You told us a little while ago you kept the facts from him.

The Witness: Well, I know that we did at a time or two mention it to him and he very nearly exploded about all those things, and we thought we would catch them up.

The Court: Didn't you realize that if you gave figures that were not accurate, and the person who might suffer from it was Dr. Haskins?

The Witness: No, I didn't.

The Court: Well, were these receipts ever totalled before March 15 when you were there? I mean when they were turned over to Mr. Menefee.

The Witness: Before my time—

The Court: No, during your time were they ever totalled prior to the time the figure was given to Mr. Menefee?

The Witness: As I recall, they were always behind.

The Court: In varying degrees? They were behind in varying degrees?

The Witness: I would say five or six months far behind.

The Court: So that while you were there, as far as you know, they never turned the correct figure over to Mr. (179) Menefee as far as receipts were concerned?

The Witness: I do not know that.

The Court: Well, you certainly didn't try to find out that they were correct, did you?

The Witness: I did the best I could.

The Court: You did the best you could, but you knew that that was not correct, didn't you?

The Witness: I didn't think.

The Court: After all, if you didn't total the figures and hadn't posted the figures, you certainly knew that if by any chance the figures were right it was not because the work was done to ascertain that fact. You just gave a figure because somebody asked you for one, is that it?

The Witness: He kept pressing for it and said he had to have a figure.

The Court: Now, did you know that a lot of the accounts receivable cards charges were never put on the cash book or cash receipts book?

The Witness: I wasn't aware of it at the time.

The Court: How about duplicate receipts? Were you aware that a large number of paid in evidenced by duplicate receipts were not put on the cash receipts book or included in the total receipts from professional services?

The Witness: At that time I did not. As I say, we had those inexperienced girls, and sometimes they would sit (180) down and copy from the receipt book onto a stenographer's pad or on some piece of paper and then I would copy that into the cash book as I had time, and—

The Court: And then somebody would ask you for a figure and you gave it, and you don't know how you got it?

The Witness: I got it from the book.

The Court: All right.

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By Mr. Uretz:

Q. Now, Miss Bennett, you testified that Mr. Menefee telephoned you sometime in 1947, that is, before March 15 of 1947, to get the doctor's gross receipts for the year, is that correct? A. It was in March this particular time.

Q. He telephoned you? A. Yes.

Q. You remember that? A. Yes.

Q. Do you remember that distinctly? A. Yes, I do.

Q. But you don't remember the figure that you gave him, is that correct? A. No, I do not.

Q. Now, Miss Bennett, do you recall a statement that you made on February 14, 1951, a sworn statement? Would you look that over, please (handing document to witness), and **(181)** tell me if you made that statement? I am going to read it to you. I just want you to tell me if this is your statement. It has got your signature? A. Yes, this is r y statement.

Q. On page 3 of that statement there appears the following, and I am quoting:

"I remember preparing the figures listing office expenses and professional income to be delivered to Mr. Menefee, Dr. Haskins' C. P. A., who looked after his tax matters. After the figures were prepared for the tax year 1946 I gave them to Dr. Haskins' daughter, Mary Fiske, to deliver to Mr. Menefee." Did you make that statement? A. May I see it, please? (The document was handed to the witness.)

The Court: What difference does it make, Mr. Uretz?

Mr. Uretz: Your Honor, there is an obvious inconsistency here.

The Court: She doesn't remember today, but she remembers back at the time she made that statement. She hasn't said anything inconsistent with it except that she didn't remember the day, which she did in 1946.

Mr. Uretz: She testified, Your Honor, that she did—

(182) The Court: Mr. Uretz, I am not going to stop you. I just don't think we are getting anywhere with the amount of emphasis put on this so called assistance. It seems to me a little disproportionate.

Mr. Uretz: Your Honor, all I am trying to bring out is that this witness has just stated that she was sure that she telephoned the figure to Mr. Menefee, and in her statement she said that she gave the figure to—

The Court: She said that as to one year she remembered turning it over to the doctor's daughter, and the other years, she couldn't remember particularly which ones, she turned a figure over on the telephone, whatever she got out of the book. It did not correspond with the book. Now, whether she has got '44 mixed up with '45, or '46 mixed up with '47, it would seem to me not to be of enough significance to waste much time on it.

Mr. Uretz: All right, Your Honor, I will change my line of questioning.

The Witness: I have taught fifteen hundred boys and girls since that time.

The Court: I realize that the time was a long time ago. I am sure if I gave Mr. Menefee a figure in the twenty-eight thousands that I wouldn't remember today what it was either.

By Mr. Uretz:

(183) Q. Miss Bennett, I hand you now a photostatic copy of the last page of Dr. Haskins' cash receipt book for December, 1944, and there appears in the upper right-hand corner the word "Total" and the figure "37,953.66." Is that in your handwriting?

The Court: Has anybody got the original?

Mr. Uretz: No, the original has been lost, Your Honor.

Mr. Claunch: What year is that?

The Court: 1944.

The Witness: No, that isn't my writing.

Mr. Uretz: All right. Just one moment, Your Honor.

By Mr. Uretz:

Q. Miss Bennett, I hand you the doctor's cash receipts ledger for the year 1945 and on page 182 there is the total collections listed month by month, and then they

are totalled to give the yearly total. Did you prepare that? A. No, I didn't prepare that. That's not my writing.

Mr. Uretz: I would like just a moment, if I could, Your Honor.

The Court: All right.

Mr. Uretz: That is all. Thank you.

The Court: Any further questions?

Mr. Claunch: No, sir.

(184) The Court: Miss Bennett, I would ask you to heed the advice of the Court. In the future if you have any employment regarding income tax you will not turn over to anybody, pressing you or not, a figure material to the income tax which you have not verified and know to be correct. Thank you.

The Witness: Thank you very much, Your Honor.

(Witness excused.)

Mr. Claunch: Will Your Honor bear with us just a minute?

The Court: All right.

Mr. Claunch: We rest, Your Honor.

Mr. Uretz: Just a moment, Your Honor. Do you have the other witness here, Miss O'Neil?

Mr. Claunch: Yes.

Mr. Uretz: I will call her as my witness.

MRS. IDELL EBERHART O'NEIL was called as a witness by and on behalf of the respondent, and, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION BY MR. URETZ.

Q. Mrs. O'Neil, where do you reside? A. 608 Barton Avenue, Chattanooga.

Q. Try to keep your voice up, Mrs. O'Neil.

(185) The Clerk: We didn't get your full name, Mrs. O'Neil.

The Witness: Idell Eberhart O'Neil.

The Court: How do you spell the first name?

The Witness: I-d-e-l-l.

By Mr. Uretz:

Q. Were you ever employed by Dr. John B. Haskins? A. Yes, I was.

Q. In what capacity did you serve? A. I was employed as secretary and bookkeeper, but from the first day of my employment I did everything in the office which was to be done.

Q. And when were you first employed? A. July 28, 1947.

Q. July 28, 1947. And how long did you stay? A. In his constant employ through August of 1950.

Q. Who was the bookkeeper for Dr. Haskins at that time? A. When I entered his employ?

Q. When you entered his service? A. Miss Katharine Bennett.

Q. Did she stay with you for a few days to show you the routine of bookkeeping in the office? A. She stayed three days, to July 31, 1947.

Q. Do you recall if she totalled the cash receipts ledger to the date of your employment? **(186)** A. Yes, she did.

Q. Well, tell me what she did exactly. A. Well, I do not know. She turned the books over to me and they were totalled.

Q. That is, there is a total at the end of July 31 in the cash entry book? She totalled the books through July, is that right? A. That is right.

Q. Where does her total appear in the 1947 cash book which I hand you now (handing document to witness)? A. It is labelled "Income through July 31," right there at the top of this sheet (indicating).

Q. I see. That is at the top of page 88? A. Yes, at the top of page 88.

Q. Then the books must have been almost completely posted at the time you came into the employment of the doctor, is that right? A. As I understood from Miss Bennett, she had worked constantly after hours to complete the books to that time.

Q. Now, at the end of the year or sometime prior to

March 15 of 1948, some work sheets were made up to give to Mr. Menefee. Do you recall that? A. Yes, I do.

Mr. Claunch: May it please the Court, I have been trying to determine to what extent this testimony is rebuttal **(187)** and I haven't been able to determine that it is rebuttal.

The Court: I haven't been able to determine it yet myself, but so far I think it is an appropriate foundation for going forward. You have introduced a good deal of testimony about the books and there has been testimony that this lady kept the books during a material portion of the years. You put in a good deal of testimony about what the methods were that went on there. I do not know what the witness knows. You originally called her and did not put her on the stand, and now the Government has called her, and I am going to give Mr. Uretz an opportunity to at least go into the matter to the point where I can see whether it is material or not. I might add that you introduced considerable testimony that there was quite a change in the books after Mrs. O'Neil got there.

Mr. Claunch: Very well, Your Honor.

By Mr. Uretz:

Q. Are these the work sheets which you prepared?

Mr. Claunch: What year is that?

Mr. Uretz: That is for the year 1947, and also the work sheets for the year 1947.

The Witness: I prepared this dividend sheet. I prepared this deduction sheet. This is the figure that is taken from that balance sheet.

Mr. Uretz: I see.

(188) The Witness: This is not my work sheet (indicating).

The Court: Mr. Uretz, you are dropping your voice to the point where the reporter can not hear you.

Mr. Uretz: I am sorry, Your Honor. I will keep my voice up.

The Witness: This is a work sheet prepared by me with the assistance of the bookkeeper for the doctor with

the exception of the figures on the right, which I believe are Mr. Menefee's figures.

By Mr. Uretz:

Q. Will you identify that sheet, describe it so there will be something in the record to show what sheet you are referring to? What is shown on that sheet? A. Well, I will have to read it, because it has been quite some time.

Q. All right. Go ahead. A. (Witness examines document.) Repairs and maintenance, East 9th Street property. Rental commission on that property. Insurance. Another insurance figure for East 9th. Taxes. City taxes, county taxes, '46.

Q. I just wanted to try to identify it for the record. Did you total the cash receipts book for 1947? A. I took the total figure which Miss Bennett left in the book for July, '47, added to that figure my five months **(189)** the months that I was there in '47.

Q. Where did you put that total? A. You will have to give me the books. Which page I don't know. (Document handed to witness.) Yes, here it is on the sheet which I had torn out. At one time I was being questioned by the Government investigators. I had taken the total, which is the figure here at the top, total for July, and added these five months' total to it, and here is the figure.

Q. All right. Would you read that figure, please? A. Yes, I will. $39,947.85.

Q. That is what the books showed for the year 1947, the cash receipts books. And who did you give that figure to? A. I am not too sure. To the best I remember I gave the work sheet to Dr. Haskins, but that's been a number of years ago.

Q. I understand. You gave the work sheets to Dr. Haskins, but the work sheets didn't contain the total receipts figure, did it? A. I was under the impression that it did. As I say, it has been a number of years.

Q. But it is your recollection that you gave it to Dr. Haskins? A. I would think that I did.

Q. You don't recall giving it to Mr. Menefee? **(190)** A. No, sir, I do not recall.

Q. Now directing your attention to the year 1948, you kept the books for the doctor all during that year, did you not? A. Yes, sir, that is right.

Q. Now at the end of the year did you prepare work sheets for Mr. Menefee? A. Yes, I prepared a work sheet for him for that year.

Q. All right. Now, I hand you several pages which are entitled Exhibit 9 here, and ask you if these are the work sheets you prepared (handing document to witness)? A. This is on our letterhead from the office, and I feel sure that this is my copy of dividends for '48.

Q. Well, just look through all of them and give me just one answer as to whether you prepared them or not. A. I prepared a portion of these sheets.

The Court: I could not hear that.

The Witness: I prepared a portion of these sheets. Parts of these sheets are in my handwriting, and those I did prepare.

By Mr. Uretz:

Q. Do you have any idea who prepared the ones that are not in your handwriting? A. I believe that this (indicating), is in the handwriting of the bookkeeper for Dr. Haskins. I am sure that it (191) is. This is rental income and reduction sheet.

Q. Now, Mrs. O'Neil, does the gross receipts figure refer to the doctor's books anywhere on these work sheets? A. I do not see those figures.

Q. Have you any idea why you left off the gross receipts figure for the year 1948? A. 1948?

Q. Well, I will ask you this: Did you give these work sheets to Dr. Haskins? A. I will give you the same answer I did before, I believe that I did, but I can not be positive.

Q. Did you total the cash receipts book for 1948? A. Yes, I did.

Q. And where did you write that total? A. You will have to give me the book and I can find it.

Q. I will like to tell you now, I have looked through those books and I couldn't find the total. It may have been

removed. A. Well, there should be some summary sheets in the book.

Q. Well, I think the summary sheets are missing.

The Court: Let the witness try to locate it, Mr. Uretz.

Mr. Uretz: Surely.

(192) The Witness: No, the summary sheets aren't in the book.

By Mr. Uretz:

Q. But you did make a month by month recap? A. Yes, I did, and entered the total. There is a summary sheet which belongs in this book where we recorded the total for the day.

Q. Who did you give the total figure to, if you recall? The total gross receipts figure, who did you give that to? A. I do not recall specifically the total gross receipts figure, and I would think I would give these sheets which I have here, which I believe to the best of my knowledge, I gave the doctor. That has been a number of years ago and I could be mistaken.

Mr. Uretz: That is all, thank you.

Mr. Claunch: No questions.

The Court: Thank you, Mrs. O'Neil.

(Witness excused.)

Mr. Uretz: Respondent rests, Your Honor.

The Court: Very well.

What about the question of briefs?

Mr. Claunch: Mr. Uretz has so many briefs to get in, Your Honor, I will let him make the suggestion. He has more to do than I have.

Mr. Uretz: Your Honor, I would like 60 days, if (193) you would grant that, sir.

The Court: Very well. Sixty days, simultaneous briefs. Thirty days for reply briefs.

The Clerk: That would be July 12 and August 12.

(Whereupon, at 10:30 o'clock a.m., the hearing in the above-entitled petition was closed.)

MEMORANDUM FINDINGS OF FACT AND OPINION.

(Filed June 20, 1956.)

Respondent determined deficiencies in income tax and additions to tax under section 293(b) against petitioners as follows:

Estate of John B. Haskins, Deceased,
H. Keith Harber, Executor

Year	*Deficiency*	*Additions to tax under sec. 293(b)*
1941	$ 6,343.10	$ 3,171.55
1942	10,571.13	5,285.56
1943	17,238.07	8,619.04
1944	26,280.06	13,140.03
1945	33,057.81	16,528.91
1946	17,391.03	8,695.52
1947	10,555.66	5,277.83

Estate of John B. Haskins, Deceased,
H. Keith Harber, Executor,
and Rebecca B. Haskins

Year	*Deficiency*	*Additions to tax under sec. 293(b)*
1948	$ 2,894.20	$ 1,447.10
1949	1,357.84	None

Petitioners concede the correctness of the deficiencies in income tax as determined by respondent except that they raise the statute of limitations as a bar to the assessment or collection of the deficiencies determined for the years 1941 to 1945 inclusive. Petitioners likewise contest the application of additions to tax under section 293(b) for all of the years for which they were determined.

FINDINGS OF FACT.

The decedent, John B. Haskins, resided in Chattanooga, Tennessee. He filed his individual income tax re-

turns for the calendar years 1941 to 1947, inclusive, with the collector of internal revenue for the district of Tennessee.

The decedent and the petitioner, Rebecca B. Haskins, were husband and wife. They filed their joint income tax returns for the calendar years 1948 and 1949 with the collector of internal revenue for the district of Tennessee.

During the taxable years in question and for many years prior thereto, decedent was a physician and surgeon practicing his profession in Chattanooga, Tennessee. Decedent died on May 5, 1953. H. Keith Harber is the duly qualified executor of his estate.

With respect to the years 1941, 1942 and 1943, the decedent's books and records could not be found. Bank deposit records were available, however, and decedent's income for those years was determined therefrom by the bank deposit method. Substantially all of decedent's income for those years was deposited in the disclosed bank accounts.

For the years 1944 to 1949, inclusive, income was determinable from the information and records made available to the investigating agents.

The nature of the unreported income for the taxable years 1941 to 1943, inclusive, was as follows:

	1941	1942	1943
Additional Professional Income	$21,404.78	$23,610.28	$26,054.98
Capital Gains	83.08	88.96	6,809.77
Ordinary Income	136.82		
Mathematical error on return		10.00	
Annuity Income			60.00
Additional Depreciation Allowed	(1,547.33)	(1,483.02)	(1,588.25)
Net unreported income	$20,077.35	$22,226.22	$31,336.50
Net income reported	3,149.02	7,446.87	10,915.86
Corrected net income	$23,226.37	$29,673.09	$42,252.36

In his income tax returns for the taxable years 1941, 1942 and 1943, decedent reported gross professional receipts in the amounts of $10,340.37, $18,840.27 and $18,739.67, respectively.

During the taxable years 1941, 1942 and 1943, decedent sold five parcels of real estate, but did not report any of the gains from such sales. The details of the sales are as follows:

1941

	Sales Price	Basis	Gain	Taxable Gain Long-Term	Taxable Gain Ordinary Income
Chamberlain & Glass Street					
Realty	$3,220.00	$3,0 .0.00	$220.00	$146.67	
Building	4,830.00	4,297.26	532.74		$532.74
Georgia Ave.					
Realty	654.61	750.00	(95.39)	(63.59)	
Building	5,242.76	5,638.68	(395.92)		(395.92)
Net unreported income			$261.43	$ 83.08	$136.82

1942

Alta Vista Dr.	$ 6,762.62	$ 6,584.69	$ 177.93	$ 88.96	

1943

606 Orr St.	$ 4,247.45	$ 2,375.48	$ 1,871.97	935.99	
Market St.	38,768.05	27,020.50	11,747.55	$5,873.78	
			$13,619.52	$6,809.77	

Decedent claimed a deduction of $3,405 in 1941 as a loss on the sale of certain stocks and as a loss due to the worthlessness of other stocks. In 1942, he claimed a deduction of $300 as a loss from the sale of stock.

The decedent's books and records made available to respondent's agent for the years 1944 to 1949, inclusive, consisted of cash receipts ledgers, expense books showing office expenses, duplicates of receipts of payments issued to patients and patients' accounts receivable cards.

Unreported income for the taxable years 1944 to 1948, inclusive, was as follows:

	1944	1945	1946	1947	1948
Additional Professional income	$37,473.64	$47,355.06	$31,259.84	$18,631.60	$ 3,577.33
Capital Gains	6,027.92	606.09	—0—	—0—	—0—
Annuity Income	272.50	1,282.50	1,620.00	2,018.12	2,602.50
Mathematical error				1,000.00	
Depreciation Adjustment	(1,124.44)	(872.75)	(179.65)	(364.65)	1,621.79
Adjustments to Rental Expenses				(2,661.54)	
Additional Contributions			(2,804.35)	(1,001.98)	
Capital loss carry-over					1,000.00
Net Unreported Income	$42,649.62	$48,370.90	$29,895.84	$17,621.55	$ 6,801.62
Net Income Reported	$11,734.79	$14,172.21	$15,065.80	$22,623.46	$30,668.40
Corrected Net Income	$54,384.41	$62,543.11	$44,961.64	$40,245.01	$37,470.02

Decedent's professional income for the taxable years 1944 to 1948, inclusive, was understated as follows:

	1944	1945	1946	1947	1948
Excess of the totals in the cash receipts ledger over gross professional receipts reported in returns	$18,663.99	$27,744.00	$ 6,596.87	$5,380.30	$3,000.00
Credits on patients' payment cards not recorded in the cash receipts ledger	19,459.79	15,703.64	9,949.03	7,287.68	
Payments as indicated by duplicate copies of receipts which were not recorded in either the cash receipts ledger or on the patients' payment cards	—0—	366.97	11,867.40	5,252.22	—0—
Unreported industry payments		916.50			
Accounts placed for collection but collected in taxpayer's office and unrecorded in the cash receipts ledger	2,017.55	1,256.00	312.50		
Commission deducted from collections by collecting agency	1,355.21	1,209.75	1,512.47	1,300.28	612.33
Mathematical errors in cash receipts ledger	(4,022.90)	158.20	1,021.57	777.62	—0—
Unclaimed expenses				(1,366.50)	(35.00)
Net unreported gross professional income	$37,473.64	$47,355.06	$31,259.84	$18,631.60	$3,577.33

A comparison of the gross professional receipts as reported by decedent in his income tax returns for the years 1944 through 1948 and as shown by his cash receipts ledgers reveals the following discrepancies:

	Per Books	Per Returns	Discrepancy
1944	$37,953.66	$19,289.67	$18,663.99
1945	48,234.27	20,390.27	27,744.00
1946	35,405.87	28,809.00	6,596.87
1947	39,997.85	34,617.55	5,380.30
1948	45,134.04	42,134.04	3,000.00

Comparison of the payments recorded on patients' accounts receivable cards with the cash receipts reported in the cash receipts ledgers disclosed that over 5,000 credits on patients' accounts receivable cards were omitted from the cash receipts ledgers during the years 1944 through 1947. The omissions are shown by the following summary of the credits on accounts receivable cards which were not posted to the cash receipts ledgers:

	1944	1945	1946	1947
January	$ 1,972.40	$ 1,131.15	$ 344.66	$ 512.60
February	2,240.50	1,256.00	250.00	507.00
March	1,832.44	1,080.74	862.01	1,429.00
April	2,097.27	1,086.00	794.19	1,218.00
May	3,273.36	1,219.00	1,188.27	1,280.00
June	2,259.00	733.00	739.93	946.56
July	2,541.17	1,354.00	640.15	439.95
August	880.42	1,458.23	544.26	97.00
September	1,108.00	1,429.50	991.00	510.00
October	582.10	1,438.00	1,331.56	142.00
November	159.13	1,621.00	1,679.00	169.00
December	514.00	1,887.02	584.00	36.57
	$19,459.79	$15,703.64	$9,949.03	$7,287.68

In addition to the credits on accounts receivable cards which were omitted from the cash receipts ledgers, many payments, as evidenced by duplicate copies of cash receipts issued to patients, had not been recorded on either the patients' accounts receivable cards or on the cash receipts ledgers. Duplicate receipts were available from the latter part of 1945 through 1949. The omissions are shown by the following summary of duplicate receipts which were not posted to the cash receipts ledgers:

	1945	1946	1947
January	$	$ 475.60	$ 197.00
February		351.00	390.00
March		527.30	1,236.00
April		1,096.51	744.70
May		767.40	344.91
June		1,100.10	1,027.81
July		747.00	1,100.50
August	17.00	1,833.50	301.27
September		1,604.75	
October	154.00	1,624.64	
November	195.97	1,274.50	
December		464.50	
	$366.97	$11,867.40	$5,252.22

A portion of decedent's practice during the war years consisted of the giving of medical examinations to employees of war industries. The following five payments for services rendered to such industries were omitted from the cash receipts ledger in 1945:

February 2	Combustion Engineering Co.	$248.00
June 5	Combustion Engineering Co.	622.50
June 6	Dickey Clay & Mfg. Co.	4.00
September 11	Dickey Clay & Mfg. Co.	20.00
October 10	Dickey Clay & Mfg. Co.	24.00
		$916.50

The following is a comparison of the reported and unreported professional receipts for the years 1941 to 1948, inclusive:

Professional Receipts

Year	*Reported*	*Unreported*
1941	$10,340.37	$21,404.78
1942	18,840.27	23,610.28
1943	18,739.67	26,054.98
1944	19,289.67	37,473.64
1945	20,390.27	47,355.06
1946	28,809.00	31,259.84
1947	34,618.55	18,631.60
1948	42,134.04	3,577.33

Decedent had unreported gains from the sale of real estate during the taxable years 1944, 1945, 1946 and 1948 as follows:

	Sales Price	Basis	Gain	Taxable Gain Long-Term
Kirby Ave.	$ 4,150.00	$ 1,148.77	$ 3,001.23	$ 1,500.61
Commodore Apt.		14,880.61		
106 Cameron Hill	45,946.72	21,750.00	9,316.11	4,658.06
Georgia Farm	10,869.25	11,000.00	(130.75)	(130.75)
			$12,186.59	$ 6,027.92
1945				
Georgia Ave.	$ 2,765.11	$ 2,260.11	$ 505.00	$ 252.50
2704 E. 46th St.	1,875.00	1,017.82	857.18	428.59
Two Lots	500.00	650.00	(150.00)	(75.00)
			$ 1,212.18	$ 606.09
1946				
11th & King Sts.	$33,725.74	$29,479.30	$ 4,246.44	$ 2,123.22
1611-13 Read Ave.	5,087.89	3,675.00	1,412.89	706.44
			$ 5,659.33	$ 2,829.66
1948				
Market & 23rd St.	$ 4,661.02	$ 2,000.63	$ 2,660.39	$ 1,330.20

In 1946, decedent took deduction of $1,000 based on a long-term loss of $10,000 due to the fact that certain stock he owned became worthless in that year.

All of decedent's real estate transactions during the taxable years in issue were handled either by John Crabtree or by E. Cecil Phillips, both of whom were real estate agents in Chattanooga, Tennessee. Decedent's real estate agents furnished decedent a detailed statement of each purchase and sale of real estate at the time of the occurrence thereof.

Decedent's practice increased greatly during the years 1941 through 1945 because of the entry into the Armed Forces of many of the younger doctors in Chattanooga. He saw and treated an average of 70 to 100 patients a day, six days a week, and an undisclosed number on the seventh day during the years involved herein. In addition, he performed surgical operations.

The decedent at the time of his death was charging two and three dollars for office calls and four dollars for house calls. He charged the minimum fees listed by the

Hamilton County Medical Society in its fee schedules for all operations which he performed.

Largely as a result of the war, personnel turnover in decedent's office was high. During most of the years in issue, decedent had a succession of bookkeepers, many of whom would stay for only a short period and then quit. The omissions of professional income from decedent's cash receipts ledger were due to incompetent employees, careless bookkeeping, and the failure of Haskins to exercise any supervision or control over the bookkeeping, either individually or through competent auditors.

A certified public accountant prepared decedent's income tax returns for all of the years involved herein. Decedent's income tax returns were made out by the accountant from statements of income and expenses prepared by employees in decedent's office, with respect to professional income, and from information furnished by employees of two real estate agents with respect to rents. The latter furnished no information with respect to profits from real estate transactions. The accountant never examined decedent's books and records.

Each year, shortly before decedent's income tax returns were due, employees in his office would prepare work sheets from his books and records. During the years 1944 to 1948, inclusive, these statements consisted of a list of decedent's professional expenses, dividends, director's fees and personal deductions, but did not include his professional income or rental income.

After the work sheets described above were prepared, they were handed to decedent who in turn would deliver them personally to the accountant or give them to someone in his office for delivery to him.

Subsequent to the receipt of decedent's work sheets for each of the years 1944 through 1948, the accountant would telephone decedent's office to obtain decedent's professional income. Someone in decedent's office would give the accountant a figure supposedly representing decedent's professional income which the accountant would

insert on decedent's work sheets and later transcribe to decedent's income tax returns.

Elizabeth Garrett Rigsby worked for the decedent from the latter part of 1933 or the first part of 1934 until May 1946. She did X-ray work, helped in the treatment room and emergency room, took down the medical histories of patients and got them ready for the decedent. She also did some bookkeeping when no one else was available. During the period Mrs. Rigsby worked for decedent, the work sheets which were prepared for the accountant's use were given to the decedent who would deliver them personally to the accountant.

Katherine Lee Bennett had been employed as decedent's bookkeeper from the autumn of 1943 until the summer of 1947. She helped prepare the work sheets which were furnished the accountant. Miss Bennett usually gave the accountant over the telephone what she stated to be decedent's professional receipts totals.

Idell Eberhart O'Neil was employed by decedent as secretary and bookkeeper from July 28, 1947, until August of 1950. She assisted in the preparation of the work sheets furnished the accountant in 1947 and 1948 and totaled the cash receipts ledgers for those years.

A good deal of the time the employees handling the books were as much as six and seven months behind in their bookkeeping entries. They kept this from decedent because they feared his reactions. Not only did they fail to do anything about it, but one of the employees, in answer to telephone inquiries from the accountant, gave him gross receipts figures which she knew to be nothing but a guess.

The accountant would obtain decedent's rental income by telephoning the offices of John F. Crabtree and E. Cecil Phillips, decedent's real estate agents. The accountant had been instructed by decedent to procure from the real estate agents whatever information was required for income tax purposes. Decedent had also authorized the real estate agents to furnish such information to the ac-

countant. The accountant procured no information with respect to sales of properties, and no such information was furnished to him by the real estate agents.

Some time after the accountant was furnished decedent's work sheets during each of the years in question, decedent would go to the accountant's office, sign his income tax return, and give the accountant a check, usually in blank, which he had signed but had not filled out. The accountant would then fill in the check with the amount of the tax owed as shown by the return and mail the check and the return to the collector of internal revenue for the district of Tennessee.

The determination of deficiencies by respondent for the years 1941 to 1945, inclusive, occurred more than five years after the returns for those years were filed.

The investigation of petitioners' returns was begun in June 1950, while Haskins was still living, at which time he furnished to the revenue agents all of his records except his office records for 1941, 1942, and 1943, which latter records could not be found. He also gave the agents information concerning his bank accounts and instructed his employees and the certified public accountant who had prepared his returns and those who handled his real estate transactions to assist and give the agents all available information relative to his income.

Haskins was well regarded in his community as a man of integrity and high moral character. He had a very large practice, to which he devoted his constant efforts. He gave no personal attention to the keeping of income records, either in connection with professional income or in connection with rents or capital gains from the sale of real estate.

Haskins personally made no entries on his books or records. His office personnel kept the records of his professional income and deductions for each year, and furnished to the accountant figures purporting to show his income and expenses. He instructed the accountant and the real estate agents to cooperate in assembling informa-

tion concerning rents and the sale of real estate. His income tax returns were prepared by his accountant.

His failure to report income from annuities was due to misinformation received by him from an insurance agent.

The income tax returns from all of the years in question are signed by John B. Haskins. The returns for 1948 and 1949 are also signed by his wife. Each of the returns for the years 1943 to 1949, inclusive, contains a printed certification, immediately above the signature of the taxpayer, reading as follows:

> I declare under the penalties of perjury that this return (including any accompanying schedules and statements) has been examined by me and to the best of my knowledge and belief is a true, correct, and complete return.

The certification on the return for 1942 is largely to the same effect, but contains some additional language not here significant.

On the return for 1941, the certificate is in the form of an affidavit, but is otherwise substantially the same as that contained on the 1942 return.

The affidavit on the 1941 return was subscribed and sworn to by Haskins before John T. Menefee, the accountant who prepared his return. All of the other returns in question are signed by Menefee as the person who prepared the return. The 1941 return form does not require such signature.

A part of the deficiency in each of the years 1941 to 1947, inclusive, was due to fraud with intent to evade taxes. The income tax returns of decedent for each of the years 1941 to 1945, inclusive, were false and fraudulent with intent to evade taxes.

OPINION.

FISHER, *Judge*: Subject to the defense of limitations applicable to the years 1941 to 1945, inclusive, petitioners concede that respondent has correctly determined deficiencies in income taxes for the years 1941 to 1949, inclusive.

Petitioners deny any fraud, and contest the determination of fraud penalties. Penalties were determined for all years involved except 1949. Both the limitations issue and the applicability of penalties depend upon our determination of whether or not, in any of the years in question, there was fraud with intent to evade taxes.

Respondent faces the burden of proving fraud by clear and convincing evidence. *Frank Imburgia*, 22 T. C. 1002; *Arlette Coat Co.*, 14 T. C. 751.

We first consider the fraud issue for the years 1941 to 1947, inclusive. At the outset, we eliminate from our discussion the minor factor of failure to report income from annuities. We are satisfied, upon the evidence, that such failure was due to mistaken advice received from an insurance agent. The revenue agent called to testify by respondent stated that he had not attributed fraud to the failure to report such annuity income, and respondent did not charge fraud for the year 1949 in which such income was likewise omitted. We hold, therefore, that such omission was not fraudulent.

The most significant factor relating to fraud is decedent's failure to report substantial income from the practice of his profession. For one of the seven years (1945), his unreported professional income was over $47,000 and was more than double the amount actually reported from that source in the year in question. His unreported professional income for each of the years 1944 and 1946 exceeded $30,000. In 1944, the amount unreported was almost double the amount reported. In 1946, the amount unreported exceeded the amount reported. In the years 1941, 1942 and 1943, the professional income unreported was in excess of $20,000 for each year. The amount unreported for 1941 was double the amount reported, and the amount unreported for 1942 was in excess of the amount reported for that year. For 1947, the unreported amount of $18,631.60 was more than half the amount reported.

Decedent was practicing as an individual and, of course, was aware of the extent of his practice and the

fees he was charging. That there were gross understatements of professional income must have been apparent to him upon his examination and execution of the returns during the seven consecutive years of substantial understatements.

Decedent had taxable long-term gains from the sale of real estate for the six consecutive years 1941 to 1946, inclusive, in the respective amounts of $83.08, $88.96, $6,809 77, $6,027.92, $606.09, and $2,829.66, none of which he reported. He also failed to report $136.82 of ordinary income for the year 1941, likewise attributable to real estate transactions. The details of the transactions were reported to him by the real estate agents at the time the transactions occurred. While the facts as to these gains were not turned over to the accountant by the real estate agents' employees, (for what reason and because of whose laxness we do not know) the omission to the report was apparent on the face of the several returns. We may contrast this with the fact that deductions were taken in the years 1941, 1942 and 1946 for long-term losses resulting from the sale or worthlessness of securities. (It should be noted that because of the limitation on the amount of the deduction for long-term capital losses in 1946, and the size of the loss, the failure to report long-term gain from the sale of real estate for 1946 did not affect decedent's tax for that year. This did not, however, relieve the decedent from the duty of reporting the long-term gain, which would affect the amount of the loss carry-over which might be used in subsequent years.)

Petitioner's answer to all of the foregoing is that decedent never examined the returns and was, therefore, unaware of the understatements of professional income and failure to report gains from the sale of real estate. We think that the certification to each of the returns, subscribed by decedent himself, to the effect that he had examined the return and accompanying schedules and statements, and that to the best of his knowledge and belief the return was true, correct and complete, belies such a possibility. We think it incredible that decedent could

have been so heedless of his duties as a taxpayer that for seven consecutive years he paid no attention whatsoever to a document as significant as a tax return. That the decedent was aware of the significance of an income tax return is evident from the various instructions given by him to his accountant and his real estate agents. It is also indicated by the careful attention given to the taking of deductions. Moreover, he was concerned enough about the tax consequences of annuities to give attention to the advice of his insurance agent. If he was otherwise so oblivious to his duties as a taxpayer (which we do not believe), his failure in this duty and his disregard of the requirements of the law have placed him and his estate in a position for which he alone is responsible.

The accountant who prepared the returns testified that decedent had signed all of them without reading them. We cannot accept this testimony as fact. We were favorably impressed with the accountant, and we have not concluded that his testimony was intentionally incorrect. We do not believe, however, that, in 1955, he could have recalled accurately that in the rush period of preparation and execution of returns, some one of his clients, for seven straight years (1941 to 1947, inclusive) or for any particular one of them, did not examine his return before subscribing it. It is particularly significant in this connection that the 1941 return discloses that the accountant himself took decedent's affidavit. We assume that in doing so he acted as a notary or in a similar official capacity although such capacity is not designated on the return. The accountant was undoubtedly familiar with the language of the certification with respect to examination of the return, schedules and statements, so that if we are to accept his testimony as true, we must, as a corollary accept the view that he knowingly collaborated with decedent in the execution by the latter of a false affidavit. We do not think the accountant would have done so, and we conclude, therefore, that the certification was correct insofar as it related to examination of the return by decedent. It is our view, therefore, that the accountant's recollection was faulty

when he testified that decedent had not examined the 1941 return. If his recollection was faulty as to the return for one year, we see no reason to credit his testimony as to the other years.

There is much in the record to the effect that various persons, including employees of decedent, were negligent and incompetent in the keeping and assembling of records, and that the correct data was never turned over to the accountant. We see no need to discuss these factors. The significant factors in the case are that the income on each of the returns was grossly understated, that the decedent subscribed the certificates which we have discussed to the effect that he examined the returns, that the only reasonable inference is that he did examine them, and that it must have been apparent to him that there were gross understatements in each and omissions as to most.

We think the views expressed in *Cooper v. United States* (C. A. 8, 1925) 9 F. 2d 216, are here significant. The Court said (p. 222):

> But it is claimed that knowledge on the part of the defendants of the contents of the returns is not shown; that they may have been made up by employees, without personal knowledge on the part of the Coopers. It was shown that defendants were the sole owners of the corporate stock. The corporation was a family affair. They were in sole and entire charge of the business; upon them was enjoined the duty of making these returns under oath. The owner of a business need not be the actual bookkeeper, to be familiar with the affairs and finances of that business. *It would present a somewhat startling situation if a taxpayer, charged by law with this duty, could sign and file a false return, made to defraud the government, and escape punishment by disclaiming knowledge of that which he has sponsored. Of course, he would not be liable for innocent clerical mistakes; but he must be held to know that which it is his duty to know, and which he solemnly promulgates. We do not by this recognize imputed or presumed knowl-*

edge or intent. We merely hold that the situation presented is one from which the jury was entitled to infer knowledge on the part of the defendants. (Emphasis supplied.)

See also *M. Rea Gano*, 19 B. T. A. 518, 553 (1930).

Petitioner relies heavily upon *Wisely v. Commissioner* (C. A. 6, 1950) 185 F. 2d 263, in urging a contrary conclusion. There are some similarities in the facts, but there are also material differences. We think the significant distinction is that, in *Wisely, supra*, the Court emphasized that Wisely admitted he knew his returns were only estimated; that he realized he was in tax difficulty; that as soon as possible after finding out through an employee that his income had been greatly understated, he secured help from friends, who placed their personal auditors on his books; and that he filed amended returns correcting the situation. No such circumstances are found in the instant case, although it should be added that decedent did cooperate after the investigation began. See discussion of *Wisely v. Commissioner, supra*, in *Owens v. United States*, 98 F. Supp. 621, 628 (1951) affd. (C. A. 8, 1952) 197 F. 2d 450. We think the foregoing is sufficient to demonstrate that *Wisely, supra*, cannot be taken as here controlling.

We hold on the basis of the foregoing discussion that part of the deficiency for each of the years 1941 to 1947, inclusive, was due to fraud with intent to evade taxes, and that each of the returns for the years 1941 to 1945, inclusive, was false and fraudulent with intent to evade taxes. As a result, we sustain respondent in applying additions to tax for fraud under section 293(b) for the years 1941 to 1947, inclusive. We likewise hold that the statute of limitations is not a bar to assessment and collection for the years 1941 to 1945, inclusive, with respect to which the defense of limitations was raised.

We do not think respondent has established fraud by clear and convincing evidence for the year 1948. For that year, petitioner included in his return professional income in the amount of $42,134.04 and omitted such income to the extent of only $3,577.33. The entire pattern seems to

us to be changed, and we cannot say that an examinati of the 1948 return by decedent would have disclosed a d crepancy of such a small amount. It is true that petition also failed to report taxable long-term capital gain fr the sale of real estate in the amount of $1,330.20, but appears from the statutory notice of deficiency that pe tioner was entitled to a capital loss carry-over from 19 in excess of said long-term capital gain, so that, althou the gain should have been reported, the omission did n result in an additional deficiency for 1948.

We hold, therefore, that additions to tax under secti 293(b) are not to be applied for the year 1948.

Decisions will be entered under Rule 5

RESPONDENT'S COMPUTATION FOR ENTRY OF DECISION.

(Filed October 19, 1956.)

The attached computation is submitted on behalf the respondent in compliance with the opinion of t Court determining the issues in this proceeding. It reflec deficiencies in income tax and section 293(b) penalties f the taxable years 1941 to 1947, inclusive, without takir into consideration assessments and payments made su sequent to the mailing of the notice of deficiency herein, amounts as follows:

	Income Tax	
Year	*Deficiency*	*Penalty*
1941	$ 6,343.10	$ 3,171.55
1942	10,571.13	5,285.56
1943	17,238.07	8,619.04
1944	26,280.06	13,140.03
1945	33,057.81	16,528.91
1946	17,391.03	8,695.52
1947	10,555.66	5,277.83

The computation is submitted without prejudice to the respondent's right to contest the correctness of the decision entered herein by the Court pursuant to the statute in such cases made and provided.

JOHN POTTS BARNES,
Chief Counsel,
Internal Revenue Service.

Of Counsel:

WILLIAM H. LOEB,
Regional Counsel,

LESTER R. URETZ,
Special Attorney.

Without prejudice to the right of appeal, it is agreed that the attached computation is in accordance with the opinion of the Tax Court in the above entitled proceeding.

(S) H. KEITH HARBER,
Counsel for Petitioner.

COMPUTATION FOR ENTRY OF DECISION

In re: Estate of John B. Haskins, Deceased
H. Keith Harber, Executor
Chattanooga, Tennessee
Docket No. 53505

Income Tax

Year	*Income Tax Deficiency*	*Income Tax Penalty*
1941	$ 6,343.10	$ 3,171.55
1942	10,571.13	5,285.56
1943	17,238.07	8,619.04
1944	26,280.06	13,140.03
1945	33,057.81	16,528.91
1946	None	8,695.52
1947	None	5,277.83

The Tax Court of the United States in its opinion filed June 20, 1956, T. C. Memo 1956-145, states that the petitioner conceded the correctness of the deficiencies in income tax for the years 1941 to 1947 inclusive, disclosed by the deficiency notice dated March 17, 1954. Accordingly, the computations of these amounts are not repeated herein.

Inasmuch as the deficiencies in tax for the years 1946 and 1947 have been assessed and paid, there are no deficiencies in tax to be assessed for those years, as shown by the statement attached.

For the year 1943, the deficiency disclosed by the deficiency notice has not been adjusted on account of changes required by reason of the non-applicability of section 6 of the Current Tax Payment Act of 1943, inasmuch as the resulting deficiency exceeds the amount disclosed by the deficiency notice.

As to the penalties, The Tax Court of the United States has held that a part of the deficiency for each year was due to fraud. Consequently, the penalties under section 293(b) of the Internal Revenue Code disclosed by the deficiency notice are to be assessed and paid.

	Income Tax	*Penalty*
	1946	
Deficiency without taking into consideration assessment made subsequent to the mailing of the deficiency notice on March 17, 1954	$17,391.03	$8,695.52
Assessment August 1956 (paid)	17,391.03	
Deficiency to be assessed	$ None	$8,695.52

	1947	
Deficiency without taking into consideration assessment made subsequent to the mailing of the deficiency notice on March 17, 1954	$10,555.66	$5,277.83
Assessment August 1956 (paid)	10,555.66	
Deficiency to be assessed	$ None	$5,277.83

DECISION.

(Entered October 26, 1956.)

Pursuant to the Memorandum Findings of Fact and Opinion filed June 20, 1956, the parties on October 19, 1956, having filed an agreed computation of the tax, it is

ORDERED and DECIDED: That there are deficiencies in income tax and additions to tax, without taking into consideration assessments and payments made subsequent to the mailing of the notice of deficiency herein, as follows:

Year	*Deficiency*	*Additions to Tax under Sec. 293(b)*
1941	6,343.10	3,171.55
1942	10,571.13	5,285.56
1943	17,238.07	8,619.04
1944	26,280.06	13,140.03
1945	33,057.81	16,528.91
1946	17,391.03	8,695.52
1947	10,555.66	5,277.83

MORTON P. FISHER

Judge.

No.

United States Court of Appeals

FOR THE SIXTH CIRCUIT.

ESTATE OF JOHN B. HASKINS, Deceased,
H. KEITH HARBER, Executor,

Appellant,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Appellee.

PETITION FOR RFVIEW OF THE DECISION OF THE TAX COURT OF THE UNITED STATES.

(Filed November 20, 1956.)

Now comes, H. Keith Harber, Executor of the Estate of John B. Haskins, deceased, and petitions the United States Circuit Court of Appeals for the Sixth Circuit for a review of the decision of The Tax Court of the United States rendered and entered on October 26, 1956, in cause numbered 53505 on the docket of said Court, wherein he was petitioner, and the Commissioner of Internal Revenue was the respondent, and in support of his petition respectfully shows this Honorable Court as follows:

VENUE.

The petitioner is an individual who is the duly appointed and acting Executor of the Estate of John B. Haskins, deceased. Petitioner was appointed by will now filed for Probate in the County Court of Hamilton County at Chattanooga, Tennessee. Petitioner's decedent was an individual citizen and resident of Chattanooga, Tennessee, within the judicial circuit of this Honorable Court. The individual income tax returns of the petitioner were filed for each of the taxable calendar years 1941, 1942, 1943,

1944, 1945, 1946, and 1947, in the office of the Collector of Internal Revenue for the District of Tennessee, which office is, and was at the time said returns were filed, located at Nashville, Tennessee, and within said judicial circuit.

The respondent is the duly appointed, qualified and acting Commissioner of Internal Revenue of the United States, holding his office by virtue of the laws of the United States.

PRIOR PROCEEDINGS

The Commissioner determined the deficiencies in income tax and additions to tax under section 293(b) for said taxable years as follows:

Year	*Deficiency*	*Additions to Tax under Section 293(b)*
1941	6343.10	3171.55
1942	10571.13	5285.56
1943	17238.07	8619.04
1944	26280.06	13140.03
1945	33057.81	16528.91
1946	17391.03	8695.52
1947	10555.66	5277.83

Thereafter petitioner filed his appeal from notices of deficiencies with The Tax Court of the United States. The hearing of said appeal by the said Tax Court of the United States was held on May 11 and May 12, 1955, at Knoxville, Tennessee. On June 20, 1956, The Tax Court promulgated its findings of fact and opinion in said appeal, and on October 26, 1956, The Tax Court entered its final order in said appeal wherein and whereby the said Court ordered and decided in exact accordance with the deficiencies and additions to tax as previously determined by the Commissioner of Internal Revenue as set out above.

NATURE OF THE CONTROVERSY.

The question presented by the record and this petition for review is whether or not any deficiency is due to the fraud of John B. Haskins with intent to evade tax for the years 1941 to 1947 inclusive.

ASSIGNMENTS OF ERROR.

Petitioner says that in the record and proceedings before The Tax Court of the United States and in the decision and order rendered and entered by said Court in said cause, manifest errors occurred and intervened to the prejudice of petitioner as follows:

1. The Court erred in that its findings of fact do not support its decision and judgment.

2. The decision of the Court is contrary to and unsupported by the facts and evidence.

3. The decision of the Court is contrary to law.

4. The Court erred in holding and deciding that petitioner's decedent was guilty of fraud with intent to evade tax when there was no proof of any kind to substantiate bad faith or intentional wrong doing.

5. The Court erred in holding and deciding that the statute of limitations did not bar the assessment and collection of deficiencies for the years 1941 to 1945 inclusive.

6. The Court erred in finding as a fact that petitioner's decedent was guilty of fraud with intent to evade tax on the basis of omission of income when there was no proof of scienter on the part of petitioner's decedent.

7. The Court erred in presuming fraud.

Wherefore petitioner asks that the decision and order of The Tax Court of the United States be reversed by the United States Circuit Court of Appeals for the Sixth Circuit and that a transcript of the record be prepared in accordance with the law and with the rules of said Court and

transmitted to the Clerk of said Court for filing and that appropriate action be taken to the end, that the errors complained of may be reversed and corrected by said Court.

ESTATE OF JOHN B. HASKINS,
By: (S) H. KEITH HARBER,
Executor.

(Verification omitted.)

In the Supreme Court of the United States

OCTOBER TERM, 1957.

No. 713.

ESTATE OF JOHN B. HASKINS, deceased,
H. KEITH HARBER, Executor,
Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

PETITION FOR A WRIT OF CERTIORARI
To the United States Court of Appeals For the Sixth Circuit.

H. KEITH HARBER,
724 Hamilton National Bank Bldg.,
Chattanooga, Tennessee,
Attorney for Petitioner.

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In the Supreme Court of the United States

OCTOBER TERM, 1957.

No. .

ESTATE OF JOHN B. HASKINS, deceased,
H. KEITH HARBER, Executor,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

PETITION FOR A WRIT OF CERTIORARI To the United States Court of Appeals For the Sixth Circuit.

Petitioner prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Sixth Circuit entered October 25, 1957, which affirmed the judgment of the Tax Court of the United States in the above entitled case.

OPINIONS BELOW.

The findings of fact and opinion of the Tax Court of the United States are not reported, but appear at pp. 140a to 156a, inclusive, of Appendix in Court below, nine extra copies of which are filed herewith. The opinion and order of the Court of Appeals is not yet reported. Copies are attached hereto at pp. 11 to 13.

JURISDICTION.

The judgment of the Court of Appeals was entered on October 25, 1957. The jurisdiction of this Court is invoked under 28 U. S. C. 1254(1).

QUESTION PRESENTED.

Was the Court of Appeals correct in ruling that substantial omissions of income over a six year period resulting from errors of taxpayer's agents, employees and certified public accountant, standing alone, constitute imputed knowledge to the taxpayer and therefore substantial evidence upon which to base the imposition of the fifty (50%) percent fraud penalty contemplated by 26 U. S. C. 293(b)?

STATUTES INVOLVED.

Title 26, Internal Revenue Code, Section 293(b), U. S. C. A. provides:

> Additions to the tax in case of deficiency. (b) Fraud. If any part of any deficiency is due to fraud with intent to evade tax, then 50 per centum of the total amount of the deficiency (in addition to such defiency) shall be so assessed, collected, and paid, in lieu of the 50 per centum addition to the tax provided in section 3612(d)(2).

Title 26, Internal Revenue Code, Section 1112, U. S. C. A. provides:

> 1112. Burden of proof in fraud cases. In any proceeding involving the issue whether the petitioner has been guilty of fraud with intent to evade tax, the burden of proof in respect of such issue shall be upon the Commissioner.

Title 26, Internal Revenue Code, Section 275(a) and (c) U. S. C. A. provides:

> Section 275. Period of limitation upon assessment and collection.
>
> (a) General rule. The amount of income taxes imposed by this chapter shall be assessed within three years after the return was filed, and no proceeding

in court without assessment for the collection of such taxes shall be begun after the expiration of such period.

(c) Omission from gross income. If the taxpayer omits from gross income an amount properly includible therein which is in excess of 25 per centum of the amount of gross income stated in the return, the tax may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time within 5 years after the return was filed.

Title 26, Internal Revenue Code, Section 276(a) U. S. C. A. provides:

Section 276. Same—Exceptions.

(a) False return or no return. In the case of a false or fraudulent return with intent to evade tax or a failure to file a return the tax may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time.

STATEMENT.

This case was initiated in the Tax Court of the United States by petition for a redetermination of deficiencies and penalties as set forth in respondent's notice of deficiency. The findings of fact of the trial court (140a to 156a, inclusive of appendix of court below) were not controverted except in respect to one evidentiary finding of fact on which the Court had no evidence to base such finding and one ultimate fact on which the only evidence was substantial omission. The former finding was that the decedent examined his tax return each year when the only evidence established that he did not. The latter was that decedent was guilty of fraud with intent to evade tax when there was no substantial evidence to support

such ultimate finding. The findings of the Tax Court may otherwise be briefly stated as follows:

Petitioner's decedent was a physician and surgeon practicing in Chattanooga, Tennessee. During the years 1941 to 1947 inclusive his income for those years was understated in his income tax return in the total amount of $121,436.86. He died May 5, 1953. Decedent's practice increased greatly during the years 1941 through 1945 due to the entry into the Armed Forces of many doctors in Chattanooga. He saw an average of 70 to 100 patients per day, and in addition, performed surgical operations. Decedent devoted his constant efforts to his large medical practice.

As a result of the war, personnel turnover in decedent's office was high. The omission of professional income from decedent's cash ledger was due to incompetent employees. Decedent employed a certified public accountant to prepare his income tax returns who obtained his information from decedent's employees with respect to income and expenses on professional income, and from employees of two real estate agents with respect to rent. The accountant never examined decedent's books and records.

The employees in the office were as much as six to seven months behind in their bookkeeping entries but kept this fact from decedent because they feared his reactions. One of the employees gave the accountant gross receipts figures which she knew to be nothing but a guess. Decedent instructed his accountant to obtain and his real estate agents to furnish whatever information was required for income tax purposes. The accountant obtained only that information relative to rents from the realtors and no information to sales of properties.

Investigation of decedent's returns began in June, 1950. Decedent instructed his employees, realtors and his certified public accountant to cooperate fully. He also furnished all available records and banking information.

Decedent gave no personal attention to the keeping of income records, he made no entries on his books, his office personnel kept the records of his professional income and deductions for each year and furnished to the accountant figures purporting to show decedent's income and expenses.

Decedent was well regarded in his community as a man of integrity and high moral character.

The trial court found that a part of the deficiency in each of the years 1941 to 1947 inclusive, was due to fraud with intent to evade tax and ruled therefore that the statute of limitations was not a bar to assessment and collection for the years 1941 to 1945, inclusive.

The Court of Appeals affirmed the Tax Court without citation of authority.

REASONS FOR GRANTING WRIT.

The issues involved in this case have never been decided by this Court. These issues deal with the immensely important subject of fraud penalties under Federal Income Tax Law and a decision by this Court is imperative for the benefit of the public.

The Court of Appeals in the instant case has rendered a decision in conflict with decisions of other Courts of Appeal which constitute a real and embarrassing conflict of opinion and authority between the Courts of Appeal.

The Court of Appeals has decided an important question of Federal Law which has not beeen but should be settled by this Court.

AN IMPORTANT QUESTION OF FEDERAL LAW NEVER SETTLED BY THE UNITED STATES SUPREME COURT IS INVOLVED.

The importance to the public of a construction by this Court of the enforcement penalty provisions of the Internal Revenue Laws is apparent in that such a ruling affects the lives of every citizen. What facts will constitute substantial evidence upon which to base a finding of fraudulent intent to evade tax which will support the fifty (50%) percent penalty has never been decided by this Court. The complex nature of these laws has forced the public to turn to specialized advice in the tax field for aid in preparing their annual income tax return and in a great number of cases almost complete dependence upon such experts.

This Court has never decided how far a taxpayer may go in depending upon expert advice in this field. This Court has never decided whether or not the employment of a dishonest employee or incompetent accountant resulting in errors favorable to the taxpayer will result in imputation to the taxpayer of a violation of Title 26, Internal Revenue Code, Section 293(b).

With daily increases in the complex nature of our Internal Revenue Laws the question here presented is imperative to the public.

Petitioner's contention is that "fraud with intent to evade tax" as contained in Section 293(b) means that the taxpayer must possess the mental intent to defraud. This fraud should not be presumed. In no tax case that we have found decided by this Court has fraud been presumed. The Tax Court and the Court of Appeals held that the taxpayer, although relying upon experts and a certified public accountant, was presumed to possess intent to

defraud where substantial omissions from the taxpayer's return occurred over a period of years from 1941 through 1947. We think this Court should construe the meaning of Title 26, Internal Revenue Code, Section 293(b) and especially the words "fraud with intent to evade tax."

In the instant case the Court of Appeals has held that substantial omission over several years is substantial evidence upon which to base a violation of Section 293(b). This holding negates Title 26 Internal Revenue Code, Section 275(c) which must be construed *in pari materia* with Title 26, Internal Revenue Code, Section 293(b).

The holding of the Court of Appeals in the instant case has construed the above statutes in a manner contrary to the intentions of Congress as evidenced by the express wording within the statutes.

This Court should settle this issue of Federal Law.

THE CIRCUITS ARE IN CONFLICT ON THIS QUESTION.

The Court of Appeals held that decedent *must* have been aware of the extent of his practice and that the gross understatement of his professional income *must* have been apparent to him upon examination of his return (the proof was that he never examined his returns).

The Court of Appeals for the Tenth Circuit holds contrary however in the case of *Davis v. Commissioner*, 184 F. 2d 86, and we feel it imperative to quote from that opinion the following:

> "The Commissioner here argues in effect that the reported income shown by the returns was so small as compared with the actual income and certain deductions were so flagrant that the taxpayers *must have known* that their returns were understated and because of this knowledge there was an intent on their part to evade taxes. With this we cannot agree. * * *

The Tax Court took the position that the taxpayers cannot shift the personal responsibility of making a correct tax return to others. That responsibility of filing a correct return is that of the taxpayer, but a failure to file a correct return does not necessarily constitute fraud. Fraud implies bad faith, intentional wrong doing, and a sinister motive. It is never imputed or presumed and the courts should not sustain findings of fraud upon circumstances which at the most create only suspicion.

It is a matter of common knowledge that very few people are familiar with the income tax law and regulations. Most of them resort to expert advice in the preparation of their returns. The collectors throughout the country have made available numerous trained agents to assist taxpayers in preparing their returns. To hold a taxpayer guilty of fraud who without actual knowledge that a return is false, and after a full disclosure to the expert preparing the same, would be untenable." (Emphasis supplied.)

The Court of Appeals for the Second Circuit also held that a taxpayer in relying upon expert advice and where no actual fraudulent intent was shown was not guilty of fraud with intent to evade tax in the case of *Bronson v. Commissioner*, 183 F. 2d 529.

These cases in holding that a taxpayer could rely upon expert advice held at the same time and as a necessary element that the taxpayer must possess *intent* to defraud before his conduct would be violative of Code Section 293(b).

The Court of Appeals for the Third Circuit in the case of *Delone v. Commissioner*, 100 F. 2d 507, held that the mere omission from income tax returns of items that should have been included over a period of years does not show a fraudulent intent.

The Court of Appeals for the Sixth Circuit in a recent opinion, *Wiseley v. Commissioner*, 185 F. 2d 263, under facts very similar to the present case ruled in direct conflict with their holding in the case presently under consideration.

The Court of Appeals for the Fifth Circuit in the case of *Eagle v. Commissioner*, 242 F. 2d 635, another case where the Commissioner established substantial omission then rested his case depending upon the presumption of correctness thereof including the Commissioner's presumption of fraud, quoted a prior holding with approval at page 638 as follows:

> "No presumption of correctness attached to the Commissioner's findings of unreported income in the determination of the *fraud* issue." (Emphasis supplied.)

Although large amounts of income were unreported in the latter case for several years, the Fifth Circuit reversed the Tax Court's finding of fraud and held that the taxpayer had relied upon an expert to assemble his information and to make his tax return; that though the expert had made substantial errors in favor of the taxpayer there was no evidence of any fraudulent intent.

CONCLUSION.

The weakness of the Court of Appeals' ruling is emphasized by the reflection that experts in the field of taxation, including the various Courts of Appeals, may disagree in the construction, application and bookkeeping procedures of our complex Internal Revenue Laws. Every taxpayer, however, shall *personally* construe correctly or suffer the pain of being branded a defrauder of his government with resulting confiscation of his property to satisfy the applicable penalty provisions as proper atonement for his heinous error.

For the reasons stated that there is conflict within the Circuits on the question here involved; that an important question of interpretation of Federal statutes is here involved which has never been decided by this Court, and that the public interest requires a ruling by this Court on this question, it is respectfully requested that this Petition for a Writ of Certiorari be granted.

H. KEITH HARBER,
714 Hamilton National Bank Building,
Chattanooga, Tennessee,
Attorney for Petitioner.

December, 1957.

APPENDIX.

OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT.

Before SIMONS, Chief Judge; ALLEN and MARTIN, Circuit Judges.

PER CURIAM. The Executor of the Estate of Dr. John B. Haskins, deceased, petitions for review of a decision of the Tax Court of the United States holding that there are large deficiencies in income taxes, with the consequence that additions to tax were assessed against the taxpayer for fraudulent failure to report substantial income from the taxpayer's medical practice for the years 1941 to 1947, inclusive. The petitioner concedes the accuracy of the income tax deficiencies as determined by the Commissioner of Internal Revenue, except that, it is contended, collection of the deficiencies assessed for the years 1941 to 1945 is barred by the statute of limitations. The application of the fraud penalty resulting in additional taxes furnishes the main contest on this review. Petitioner contends that the failure of the doctor to make correct income tax returns was not due to intentional fraud, but was occasioned by negligence of employees in his office in not supplying correct data from his office records upon which a Certified Public Accountant, selected by the doctor, made out the returns.

In carefully considered findings of fact, supported by substantial evidence and not clearly erroneous, and in a well-reasoned opinion, the tax court found as a matter of fact that the decedent had fraudulently failed to report accurately his income for the years involved in an attempt to evade taxes. Consequently, the statute of limitations was held not to bar the assessments for the years 1941 to 1945, inclusive. The tax court considered the most sig-

nificant fact in establishing the doctor's fraud to have consisted in his failure to report a very substantial amount of his income from the practice of his profession for the year 1945. His unreported income from his professional services in that year exceeded $47,000, which was more than double the amount actually reported by him. For each of the years 1944 and 1946, his unreported income from his medical practice exceeded $30,000. His unreported professional income for the years 1941, 1942 and 1943, was more than $20,000 for each year. For 1941 and 1944, the amount of his unreported income was double the amount reported.

The tax court pointed out that the doctor was conducting an individual practice and must have been aware of its extent and of the fees he was charging; and that the gross understatement of his professional income must have been apparent to him upon examination of the returns at the time of execution during the seven consecutive years. He also failed to report certain capital gains from real estate transactions.

Petitioner relies upon a decision of this court in *Wisely v. Commissioner*, 185 F. (2d) 263 (C. A. 6). We think the marked difference between the two cases renders them clearly differentiable. As the tax court stated in its opinion, Dr. Wisely, knowing that his income tax returns had only been estimated and realizing that he was in difficulty because of the understatement of his income, secured assistance of friends in procuring personal auditors for his books as soon as possible after he found out from an employee that his income had been greatly understated. He then filed amended returns to correct the originals.

Upon the basis of the findings of fact of the tax court and for the reasons stated in its opinion, the decision of the tax court is affirmed.

JUDGMENT OF THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT.

(Filed October 25, 1957.)

On Petition to Review a decision of the Tax Court of the United States.

This cause came on to be heard on the transcript of record from the Tax Court of the United States, and was argued by counsel.

On consideration whereof, it is now here ordered and adjudged by this Court that the decision of the said Tax Court in this cause be and the same is hereby affirmed.

Office - Supreme Court, U.S.
FILED
FEB 4 1958
JOHN T. FEY, Clerk

No. 713

In the Supreme Court of the United States

OCTOBER TERM, 1957

ESTATE OF JOHN B. HASKINS, DECEASED, H. KEITH HARBER, EXECUTOR, PETITIONER

v.

COMMISSIONER OF INTERNAL REVENUE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

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In the Supreme Court of the United States

OCTOBER TERM, 1957

No. 713

ESTATE OF JOHN B. HASKINS, DECEASED, H. KEITH HARBER, EXECUTOR, PETITIONER

v.

COMMISSIONER OF INTERNAL REVENUE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

OPINIONS BELOW

The memorandum findings of fact and opinion of the Tax Court (R. 140a–156a) are not officially reported. The opinion of the Court of Appeals (Pet. 11–12) is reported at 249 F. 2d 143.

JURISDICTION

The judgment of the Court of Appeals was entered October 25, 1957. (Pet. 13.) The petition for a writ of certiorari was filed on January 8, 1958. The jurisdiction of this Court is invoked under 28 U. S. C., Section 1254.

QUESTION PRESENTED

Whether the evidence sustains the determination of both courts below that a part of the deficiency in the decedent's income taxes for each of the taxable years 1941–1947 was due to fraud with intent to evade tax.

STATUTE INVOLVED

Internal Revenue Code of 1939:

> SEC. 293. ADDITIONS TO THE TAX IN CASE OF DEFICIENCY.
>
> * * * * *
>
> (b) *Fraud.*—If any part of any deficiency is due to fraud with intent to evade tax, then 50 per centum of the total amount of the deficiency (in addition to such deficiency) shall be so assessed, collected, and paid, in lieu of the 50 per centum addition to the tax provided in section 3612 (d) (2).
>
> (26 U. S. C. 1952 ed., Sec. 293.)
>
> SEC. 1112. BURDEN OF PROOF IN FRAUD CASES.
>
> In any proceeding involving the issue whether the petitioner has been guilty of fraud with intent to evade tax, the burden of proof in respect of such issue shall be upon the Commissioner.
>
> (26 U. S. C. 1952 ed., Sec. 1112.)

STATEMENT

The facts as found by the Tax Court (R. 140a–150a) may be summarized as follows:

The decedent, John B. Haskins (hereafter called the taxpayer), was a physician and surgeon practicing in Chattanooga, Tennessee. He died in 1953. (R. 141a.)

Taxpayer's unreported income for the years 1941 to 1947, inclusive was attributable principally to additional professional income and to gains from the sales of real estate. (R. 141a–143a.) (As the Court of Appeals noted (Pet. 11), the amount of such unreported income for these years as reconstructed from all available records and found by the Tax Court (R. 141a, 143a) is not disputed.)

The following is a comparison of taxpayer's reported and unreported professional receipts for the years 1941 to 1947, inclusive (R. 145a):

Year	Professional receipts	
	Reported	Unreported
1941	$10,340.37	$21,404.78
1942	18,840.27	23,610.28
1943	18,739.67	26,054.98
1944	19,289.67	37,473.64
1945	20,390.27	47,355.06
1946	28,809.00	31,259.84
1947	34,618.55	[1] 18,631.60

[1] For the year 1948, taxpayer included in his return professional income of $42,134.04 and omitted such income to the extent of $3,577.33. The Tax Court held that the Commissioner had not established fraud by clear and convincing evidence for the year 1948. (R. 155a.)

In addition, the taxpayer had unreported taxable capital gains from the sale of real estate during the years 1941–1945, inclusive, as follows (R. 141a–143a, 146a):

1941	$83.08
1942	88.96
1943	6,809.77
1944	6,027.92
1945	606.09

All of taxpayer's real estate dealings during the taxable years in issue were handled by two real estate

agents, who furnished him a detailed statement of each purchase and sale of real estate at the time of the transaction. (R. 146a.)

Taxpayer's practice increased greatly during the years 1941 through 1945, and he treated an average of 70 to 100 patients a day. (R. 146a.) He gave no personal attention to the keeping of income records, either in connection with professional income or in connection with rents or capital gains from the sale of real estate. (R. 149a.) Taxpayer personally made no entries on his books or records. His office personnel kept the records of his professional income and deductions for each year. (R. 149a.)

Largely as a result of the war, personnel turnover in the taxpayer's office was high. The omissions of professional income from the taxpayer's cash receipts ledger were due to incompetent employees, careless bookkeeping, and the failure of the taxpayer to exercise any supervision or control over the bookkeeping, either individually or through competent auditors. (R. 147a.)

A certified public accountant prepared taxpayer's income tax returns for all of the years involved herein. The returns were made out by the accountant from statements of income and expenses prepared by employees in the taxpayer's office, with respect to professional income, and from information furnished by employees of the two real estate agents with respect to rents. The latter furnished no information with respect to profits from real estate transactions. The accountant never examined the taxpayer's books and records. (R. 147a.)

Each year, shortly before the taxpayer's income tax returns were due, employees in his office would prepare work sheets from his books and records. During the years 1944 to 1947, inclusive, these statements consisted of a list of the taxpayer's professional expenses, dividends, director's fees and personal deductions but did not include his professional income or rental income. After these work sheets were prepared, they were handed to the taxpayer who, in turn, would deliver them personally to the accountant or give them to someone in his office for delivery to him. (R. 147a.)

Subsequent to the receipt of the taxpayer's work sheets for each of the years 1944 through 1947, the accountant would telephone the taxpayer's office to ascertain his professional income. Someone in the taxpayer's office would give the accountant a figure supposedly representing the taxpayer's professional income which the accountant would insert on the taxpayer's work sheets and later transcribe to his income tax returns. (R. 147a–148a.)

A good deal of the time, the employees handling the taxpayer's books were as much as six and seven months behind in their bookkeeping entries. They kept this information from the taxpayer because they feared his reactions. Not only did they fail to do anything about it, but one of the employees, in answer to telephone inquires from the accountant, gave him gross receipts figures which she knew to be nothing but a guess. (R. 148a.)

The accountant would obtain the taxpayer's rental income by telephoning the offices of the taxpayer's

real estate agents. The accountant had been instructed by the taxpayer to procure from the real estate agents whatever information was required for income tax purposes. The taxpayer had also authorized the real estate agents to furnish such information to the accountant. The accountant procured no information with respect to the taxpayer's sales of properties and no such information was furnished to him by the real estate agents. (R. 148a–149a.)

Some time after the accountant was furnished the taxpayer's work sheets during each of the years in question, the taxpayer would go to the accountant's office, sign his income tax return and give the accountant a check, usually in blank, which he had signed but had not filled out. The accountant would then fill in the check with the amount of the tax owed as shown by the return and mail the check and the return to the Collector of Internal Revenue for the District of Tennessee. (R. 149a.)

Each of the taxpayer's returns for the years 1943 to 1947, inclusive, contains a printed certification, immediately above the signature of the taxpayer, reading as follows (R. 150a):

> I declare under the penalties of perjury that this return (including any accompanying schedules and statements) has been examined by me and to the best of my knowledge and belief is a true, correct, and complete return.

The certification on the return for 1942 is largely to the same effect. On the return for 1941, the certificate is in the form of an affidavit, but is otherwise

substantially the same as that contained on the 1942 return. The affidavit on the 1941 return was subscribed and sworn to by taxpayer (R. 150a.)

The Tax Court found on all the evidence that part of the deficiency in each of the years 1941 to 1947, inclusive, was due to fraud with intent to evade taxes and that the income tax returns of the taxpayer for each of the years 1941 to 1945, inclusive, were false and fraudulent with intent to evade taxes. (R. 150a.)

Upon the basis of the foregoing facts, the Tax Court, sustaining the Commissioner's determination (R. 140a), held that the taxpayer was liable for the 50% fraud penalties for the years 1941–1947 (R. 150a–155a) and that the assessment and collection of the deficiencies in income taxes and in the statutory additions thereto (fraud penalties) for the years 1941 through 1945 are not barred by the statute of limitations (R. 155a). The Court of Appeals, in a *per curiam* opinion, affirmed. (Pet. 11–13.)

ARGUMENT

The issue presented is wholly factual and was correctly decided by the Court of Appeals and the Tax Court. No further review is required.

1. The Tax Court summarized its findings of fact in the following language (R. 154a):

> The significant factors in the case are that the income on each of the returns was grossly understated, that the decedent subscribed the certificates which we have discussed to the effect that he examined the returns, that the only reasonable inference is that he did examine them, and that it must have been apparent to

him that there were gross understatements in each and omissions as to most.

These findings, affirmed by the Court of Appeals, do not warrant review here. *United States* v. *Gypsum Co.*, 333 U. S. 364, 395–395; *Schwarzkopf* v. *Commissioner*, 246 F. 2d 731 (C. A. 3d); *Lipsitz* v. *Commissioner*, 220 F. 2d 871, 876 (C. A. 4th); *Heyman* v. *Commissioner*, 156 F. 2d 389, 393–394 (C. A. 2d), certiorari denied, 338 U. S. 904.

The findings of fraud in this case do not rest upon the advice of an expert resolving a technical question of net income, but upon the taxpayer's failure to disclose his gross income from his professional receipts and long-term gains from the sale of real estate. The taxpayer did not disclose these facts even to his accountant. The latter simply prepared the returns upon the information furnished to him by the taxpayer's own employees or agents; the taxpayer personally signed and verified the returns, certifying as to their truth and correctness. (R. 150a.) It is obvious that the taxpayer cannot evade his personal duty to report his own income accurately by delegating the record keeping to his employees. *Cooper* v. *United States*, 9 F. 2d 216, 222 (C. A. 8th).

2. There is no conflict of decisions. *Bronson* v. *Commissioner*, 183 F. 2d 529 (C. A. 2d); *Davis* v. *Commissioner*, 184 F. 2d 86 (C. A. 10th); and *Eagle* v. *Commissioner*, 242 F. 2d 635 (C. A. 5th) are distinguishable. In each the taxpayer disclosed all of his income to an expert and the alleged deficiencies arose out of a technical tax question, not within the competence of a taxpayer and as to which he was entitled

to rely upon the opinion of the expert. In the case at bar, the taxpayer's accountant "never examined decedent's books and records" (R. 147a), nor were the deficiencies, as just noted, the result of an expert determination of net income, but of "gross understatements" of gross income (R. 152 (a)).

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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